

1
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 09-50026

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6 In the Matter of:

7
8 MOTORS LIQUIDATION COMPANY, et al.

9 f/k/a General Motors Corporation, et al.,

10
11 Debtors.

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14
15 United States Bankruptcy Court

16 One Bowling Green

17 New York, New York

18
19 August 9, 2010

20 10:05 AM

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23 B E F O R E:

24 HON. ROBERT E. GERBER

25 U.S. BANKRUPTCY JUDGE

1
2 HEARING re Motion of the Official Committee of Unsecured
3 Creditors of Motors Liquidation Company for an Order Pursuant
4 to Bankruptcy Rule 2004 Directing Production of Documents by
5 (I) the Claims Processing Facilities for Certain Trusts Created
6 Pursuant to Bankruptcy Code Section 524(g) And (II) General
7 Motors LLC and the Debtors
8

9 HEARING re Application of the Official Committee of Unsecured
10 Creditors Holding Asbestos- Related Claims for an Order
11 Pursuant to Bankruptcy Rule 2004 Authorizing the Taking of
12 Document Discovery and Deposition Testimony from the Debtors
13 and from General Motors, LLC, its Subsidiaries and Affiliated
14 Companies
15

16 HEARING re The Future Asbestos Claimants' Application for an
17 Order Pursuant to Bankruptcy Rule 2004 Authorizing and
18 Directing (A)the Production of Documents and (B)the Oral
19 Examination of Individuals Designated by the Debtors and New GM
20 Believed to Have Knowledge of Relevant Matters
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25 Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: All right. GM. Motors Liquidation Corporation -- Company.

(Pause)

THE COURT: I want to get appearances by everybody. I want word as to the extent to which objections remain and those which have been consensually resolved. And then I want everybody to sit down.

Mr. Karotkin, you've got the debtor.

MR. KAROTKIN: Yes, sir. Stephen Karotkin, Weil Gotshal & Manges LLP, for the debtors.

THE COURT: Right. Is somebody other than Mr. Mayer appearing for the creditors' committee?

MR. BENTLEY: Yes, Your Honor. Philip Bentley of Kramer Levin.

THE COURT: Right, Mr. Bentley.

THE COURT: Okay. For the D -- the Delaware Management Company and the objecting trusts --

MR. JURIS: Yes, Your Honor.

THE COURT: -- DCPF.

MR. JURIS: Yes, Your Honor. Stephen Juris from Morvillo Abramowitz. In addition to the Delaware Claims Processing Facility, we represent the Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust, the Celotex Trust -- I'll use the short form to make it easier for

1 the Court. And I've given my full appearance to your staff.
2 Babcock & Wilcox Company Asbestos Personal Injury Trust, the
3 Owens Corning Trust, the DII Industries Trust, the USG Trust.
4 And I think that covers it.

5 THE COURT: All right. Is that Ms. Stubbs?

6 MS. STUBBS: Yes. Emily Stubbs of Friedman Kaplan
7 Seiler & Adelman for the Manville Personal Injury Settlement
8 Trust and Claims Resolution Management Corporation.

9 THE COURT: All right. Thank you.

10 MR. SWETT: Good morning, Your Honor. Caplin &
11 Drysdale for the official committee of unsecured creditors
12 holding asbestos related claims.

13 THE COURT: Right. Okay. Okay. I'd like to get a
14 briefing from somebody -- I don't know if that's better you,
15 Mr. Bentley, than Mr. Karotkin, but either way -- on what has
16 been consensually resolved since I originally got all these
17 papers especially vis-à-vis the asbestos committee.

18 MR. BENTLEY: Your Honor, we have reached a
19 resolution with the debtors and new GM. The terms of the
20 resolution are set forth in the responses that were filed by
21 those two parties a week ago. We have not reached a resolution
22 with the other parties. We have scaled back the request we've
23 made to those other parties as set forth in our reply but we
24 have not -- and we have had discussions with those parties
25 since last Thursday. But we have not been able to reach any

1 resolution.

2 THE COURT: All right. Have a seat, please, Mr.
3 Bentley. Okay, folks, I've read the papers. I don't need
4 argument on whether or not the creditors' committee's request
5 is sufficiently relevant. It plainly is. And I don't need
6 argument on whether 2004 is appropriately invoked in this
7 procedural posture. With the contested matter likely but not
8 yet initiated, I think it plainly is. I've authorized it, in
9 fact, in this very case when I granted the same result for the
10 asbestos committee. I've done it a zillion times, even most
11 obviously in cases where creditors' committees are doing their
12 investigation and their lawsuit against the bank group is all
13 but certain. I don't need debate on that.

14 What I do want you people to address is the remaining
15 burden, if any, associated with the responses now that the
16 creditors' committee has scaled back its request. And akin to
17 an issue that I dealt with in Chemtura, whether we've now put
18 in place sufficient screening to protect individual litigants
19 on their individual claims in any future battle with GM -- with
20 Motors Liquidation Company, or whether, incident to granting
21 any request by the creditors' committee or, to be more precise,
22 in connection with any grant of the creditors' committee
23 request, we'll need to create a wall between the creditors'
24 committee and those who would ultimately be defending any
25 claims or a stronger wall.

1 I saw a lot -- I think it was in your brief, Ms.
2 Stubbs -- about rightness and the fact that the Bates White
3 request had been made and you have some kind of licensing
4 mechanism. I assume that's all now Emily Litella style, never
5 mind, in light of the fact that the factual predicate for that
6 argument or in lieu of that argument is now evaporated.

7 MS. STUBBS: Yes, Your Honor.

8 THE COURT: And I assume I should disregard it. I'm
9 just laying out things that you'll each address in your oral
10 argument.

11 On behalf of DCPF, in particular, and perhaps the
12 individual trusts that DCPF serves, reading your brief, Mr.
13 Juris, it sure walked and talked and quacked like after I was
14 going to rule on these issues, that you then had some thought
15 that you were going to then go down to Delaware and
16 collaterally attack my order in enforcement in a Rule 45
17 context. I want to know if that's really your intention. If
18 it is your intention and you intend to get a second bite at the
19 apple, that would be a matter of material concern to me. But
20 hopefully, you can give me a comfort that I read your papers
21 incorrectly.

22 I also want those on the trust side who argued it to
23 address the matter of notice which the briefs seemed to be
24 dancing around in terms of talking about your practice, what
25 you like to do. And it wasn't clear to me whether your

1 practice could or should trump a court order that requires
2 things to be done. You give notice to a bunch of tort
3 litigants, of course they're going to say no. If I were a
4 lawyer for a tort litigant, I'd say no. Why make things easy
5 for your opponent? So what is the purpose of that? And is
6 this notice procedure supposed to trump what a Court thinks is
7 necessary or appropriate to run a case on its watch? I need
8 help from you in that regard.

9 And I especially want to know if the trusts -- not
10 especially because the matters that I articulated are matters
11 of considerable concern to me -- whether the trusts are still
12 looking for the creditors' committee to contact 7,000 claimants
13 to get what the trusts, except for Celotex, already have in the
14 computerized database.

15 It seems to me, folks, that this is all about the
16 extent, if any, to which we have residual burden and what we
17 need to do to put in place appropriate confidentiality
18 arrangements and, in particular, what we need to do to protect
19 individual claimants. Now, I'm not an appellate court. You
20 don't need to address my concerns first. But I need each side
21 to address those matters by the time we're all done.

22 And I'm assuming that what I have now before me is
23 the revised narrowed and refined request as articulated by Mr.
24 Bentley in his reply brief in contrast to the original broader
25 request which, if it hadn't been narrowed, would have been a

1 matter of concern to me which I no longer understand to be on
2 the table.

3 Mr. Bentley, I'll hear from you first. And I ask you
4 to come to the main lectern, if you would, please.

5 MR. BENTLEY: Good morning, Your Honor. To begin, by
6 answering the question you just posed, you're absolutely right.
7 What's before the Court is the narrower set of requests that
8 are set forth in our Thursday -- our pleading of last Thursday.

9 I would suggest that it might make sense for me to be
10 quite brief now, because I think Your Honor knows our position,
11 and to then cede the floor to the other side but reserve some
12 time for rebuttal.

13 THE COURT: Sure.

14 MR. BENTLEY: Just very briefly, I think the guts of
15 the concerns that were raised in the other side's papers have
16 been addressed entirely or in large part by the narrowing that
17 we conducted. We're not seeking any underlying medical
18 documentation or financial documentation. We're merely seeking
19 the information contained in the claims forms themselves, which
20 is quite limited, as I think -- we attached a sample claim form
21 to our reply. And as Your Honor can see, it does require each
22 claimant to identify the disease or diseases that he or she is
23 suffering. But that's not confidential, Your Honor. Every one
24 of these claimants is somebody who filed a complaint against GM
25 prior to the petition date. That's the universe we're looking

1 at. Those complaints were not filed under seal. So they're
2 publicly on record as having alleging diseases, presumably the
3 same diseases --

4 THE COURT: Let me make sure I'm keeping up with you,
5 Mr. Bentley, because I assume that GM has a complaint from each
6 of those litigants that were described, the ailment that the
7 plaintiff had. Your desire would be to see whether that
8 plaintiff asserted a different ailment to the relevant asbestos
9 trust or --

10 MR. BENTLEY: The truth is, Your Honor, the medical
11 data on the forms, if they want to propose that that be
12 redacted or not provided, that's okay with us. We didn't
13 propose that because we, frankly, thought it might be more
14 burdensome for them to start redacting things piecemeal. But
15 we actually don't need that data. There's a lot of other
16 information in the claims forms that is very important, most
17 important, their exposure allegations, the allegation my
18 disease was caused by exposure to the product of the company
19 that's now represented by this trust. Those, we believe, are
20 critical. Also of significant importance, although not quite
21 as central as that, are a variety of other sorts of data that
22 will enable us essentially to fill in the gaps in the debtors'
23 claims data base.

24 The approach we're proposing here is the traditional
25 estimation approach. Sometimes debtors have claims databases

1 that are very full in the information they provide. This
2 debtor's database is somewhat thin and it doesn't have a number
3 of important fields filled in. For example, the age of each
4 claimant. That's an important data point because in our tort
5 system, an older claimant -- the claim of an older claimant is
6 less valuable than of a younger claimant because there are
7 fewer years left to live. The date on which the claimant's
8 disease was diagnosed is also a very important variable. If it
9 was diagnosed a long time ago, the claim was considered stale.
10 And the all estimation experts will tell Your Honor it's worth
11 a lot less.

12 So those are two examples of the sorts of data that
13 should be contained in the claim forms that we're seeking and
14 that is relevant. The medical data that you mentioned -- that
15 Your Honor mentioned really is the one example of something
16 that we don't really care about. And if they want to exclude
17 that, they're welcome to.

18 THE COURT: So your point is you don't care whether
19 or not it's provided. You're just happy to get it the cheapest
20 way possible?

21 MR. BENTLEY: That's correct.

22 THE COURT: What mechanisms have you proposed or do
23 you have in mind to protect the individual litigants from
24 anything being produced to you or your experts that could later
25 prejudice them in any litigation against the company if it ever

1 got to that point?

2 MR. BENTLEY: We've proposed a standard
3 confidentiality agreement. If Your Honor -- which we annexed
4 as an exhibit to our reply papers. If Your Honor believes that
5 should be tightened up, we have no objection whatsoever. We
6 didn't think there was any need for tightening. The agreement
7 contains standard provisions which require us to treat this on
8 a professional's eyes only basis. We cannot share it with
9 committee members except in summary form. It requires to use
10 this only in connection with this litigation. And when this
11 estimation litigation is over to destroy it or to return it.
12 It will not appear in any article that our experts are ever
13 going to publish. It'll be used only for this purpose only.
14 So we do intend to -- we think those provisions should be
15 sufficient to satisfy the concerns Your Honor has raised.

16 THE COURT: Pause, please, Mr. Bentley. I'm not so
17 concerned about you sharing it with committee members as I am
18 with you sharing it with whoever at the debtors, especially
19 Motors Liquidation Company, would be actually defending these
20 lawsuits on an individual basis.

21 Just a minute.

22 (Pause)

23 THE COURT: Before you answer, Mr. Bentley, CourtCall
24 is complaining that people are having trouble hearing from my
25 mic. I now have it in maximum volume. I assume you can hear

1 me fine.

2 MR. BENTLEY: Absolutely, Your Honor.

3 THE COURT: Folks in the back of the room, can you
4 hear me okay? People are nodding. CourtCall, you're just
5 going to have to do the best you can. That's the risk people
6 take when they appear by phone.

7 All right. Do you remember the question, Mr.
8 Bentley?

9 MR. BENTLEY: I do, Your Honor. We think Your
10 Honor's concern is an important one. Frankly, we have not
11 focused on that. And if there is tightening up that needs to
12 be done, we'd be happy to do it. The way the contract
13 currently reads, the one we have proposed, is it permits the
14 debtors' professionals to use this information solely for
15 purposes of the estimation. But, as Your Honor is suggesting,
16 it may be that that needs to be made a little bit more specific
17 and a little bit more concrete. The debtor, as I believe Your
18 Honor knows, has an estimation expert, Francine Rabinovitz, who
19 will be crunching the data and presenting Your Honor with an
20 expert report. And she does not play any role in the ongoing
21 tort litigation against GM. So I think the objection here --

22 THE COURT: Well, maybe I need to ask Mr. Karotkin
23 the question. But what I would have in mind then akin to what
24 I did in Chemtura, is to tell Ms. Rabinovitz -- is that her
25 name?

1 MR. BENTLEY: Correct.

2 THE COURT: -- that she's under a wall so that she
3 couldn't share the information with whatever individual lawyers
4 on behalf of GM might ultimately be defending the claims if
5 later brought on a one on one basis.

6 MR. BENTLEY: And I think we might want to make
7 certain that it's specifically drafted to restrict the debtor's
8 access to certain people who are involved in the estimation
9 process. And a question I don't know the answer to is whether
10 some of those people are also involved in the defense of tort
11 claims in the tort system.

12 THE COURT: Well, I would assume that the last thing
13 in the world that Mr. Karotkin would be doing was defending an
14 individual asbestos claim. So we just got to make sure that
15 that goes across the board as far as I'm concerned.

16 MR. BENTLEY: The issue I had in mind, Your Honor,
17 was not Mr. Karotkin or anyone at his firm. It was whether
18 there might be people at new GM who might be participating in
19 the -- you know what? On reflection, it's probably not a
20 concern because people at the debtors would be involved in the
21 estimation. People at new GM would not be involved in the
22 estimation. And only new GM will be defending claims in the
23 tort system.

24 THE COURT: Well, okay. I've articulated the
25 concern. I want to give everybody a chance to be heard. I

1 want to deal with this on a conceptual level. And on a
2 conceptual level, what I care about is getting the
3 macroeconomic information we need as part of this estimation
4 without prejudicing individual litigants in their one-on-one
5 lawsuits in the future. We successfully did that in Chemtura
6 and I hope to be equally successful here.

7 MR. BENTLEY: And I think that should be eminently
8 manageable. We'll focus on that, Your Honor.

9 THE COURT: Okay. Continue, please, Mr. Bentley.

10 MR. BENTLEY: Just a few remaining points, Your
11 Honor. What we're seeking here is very limited as I've said.
12 And what emerged in the papers that were filed by the claims
13 facilities last week was that all of this information with one
14 exception, the Celotex trust data, all of the information other
15 than Celotex is available electronically and on databases that
16 they describe as being sophisticated and they no doubt are.
17 That's their job.

18 We have withdrawn our request for any data from
19 Celotex. We're limiting it just to electronic information. So
20 what we're requesting is merely that they extract the
21 particular fields, the particular bits of data that we're
22 requesting, and provide them to us. And I understand that may
23 require some work, data processing, software kind of work, to
24 make sure a code is written to extract the right information.
25 Frankly, that's what they're in the business of doing so I

1 would think that wouldn't be a great burden. But if it helps
2 the process, Your Honor, we're prepared to have our experts
3 step in and help write the code. And if it's a matter of
4 expense, I would think that Your Honor might authorize this
5 estate to pay a modest reimbursement of expense that might be
6 entailed in doing this electronic project.

7 But we don't think it's a massive project. We think
8 it's eminently manageable. We think it's the sort of project
9 they're set up to do. And I would note, Your Honor recalls the
10 back and forth about the Manville Trust having a voluntary
11 process which, at the end of the road, they decided not to
12 extend to us. That's very pertinent, Your Honor. The Manville
13 Trust is in the business, among other things, of providing this
14 data to people who ask or at least most people who ask for it.
15 They charge a modest fee. But that's their job. And that's
16 all we're asking them to do here.

17 And so, I would suggest, Your Honor, with all respect
18 to my fellow counsel in this courtroom that some of the
19 concerns you may hear expressed about burden really are masking
20 the fact that there is an alliance between the trusts and the
21 plaintiff's bar. They are controlled by the same plaintiff's
22 law firms that set them up and that negotiated the terms of the
23 524(g) trusts at the end of these bankruptcies. And they have
24 an allied interest with the plaintiff's bar in keeping this
25 information confidential for the very reason that we want the

1 information to use in our estimation. That is to show that
2 this double-dipping, triple, quadruple-dipping process is
3 occurring. This is an issue that's being fought out in
4 courtrooms, state courtrooms, across the country. And it's
5 very heated. It's one of the cutting edged issues in this tort
6 litigation across the country, the asbestos litigation. And if
7 it were to get out, if Your Honor were to rule in your
8 estimation ruling that the spike and values that occurred over
9 the last decade was a short term thing and that the trusts are
10 now paying as much, we believe in the aggregate, as those
11 companies were paying in the tort system before they went
12 bankrupt and that those values should be and probably will be
13 reflected in the tort system going forward. That is a damaging
14 ruling to the plaintiffs in state courts across the country
15 going forward. That's what they don't want, Your Honor. And I
16 would suggest that that may color -- that may stand behind the
17 position they're taking why they're making such a big deal
18 about the burden. After all, the papers that were filed were
19 not cheap to prepare. And we think it would cost them much,
20 much less to actually respond to our discovery than to litigate
21 the way they've been litigating.

22 THE COURT: All right. Do you want to save the rest
23 for reply?

24 MR. BENTLEY: I would, Your Honor. Thank you.

25 THE COURT: Okay. Mr. Juris?

1 MR. JURIS: Thank you, Your Honor. Thank you, Your
2 Honor. Stephen Juris. I guess I should start by saying my
3 papers probably wouldn't have been as extensive -- and I'm
4 sorry to put Your Honor through reading them if the request we
5 had received in the first instance had been a little different.
6 But --

7 THE COURT: I understand.

8 MR. JURIS: But we'll leave that --

9 THE COURT: Okay. So roll with the punch now,
10 however.

11 MR. JURIS: Absolutely.

12 THE COURT: And focus on the request as narrowed.

13 MR. JURIS: Certainly, Your Honor. I think, to be
14 sure, the request is less burdensome than it was. And I think,
15 as Your Honor's prefatory comments signaled, Your Honor is
16 trying to assess the respective need and burden and how that
17 shakes out in the balancing test how much is --

18 THE COURT: But, frankly, I'm beyond need, Mr. Juris,
19 because I consider this matter that they're asking about much,
20 much more than sufficient to satisfy relevance requirements.
21 The issue is burden and bang for the buck. And if it's still
22 an issue when you've got a computerized database, delay. So
23 I'm not going to put a sock in your mouth and foreclose you
24 from discussing other things. But I think that coupling my
25 review of the briefs with my knowledge of the law, I don't need

1 argument on relevance and I don't need argument on the extent
2 to which 2004 can be utilized.

3 MR. JURIS: Understood, Your Honor. If it would help
4 the Court, let me take a step back and explain what I think
5 would be entailed for us to comply with the creditors'
6 committee's request as presently framed. You're absolutely
7 right that the endeavor does not involve nearly the same degree
8 of review of hard copy documents and redaction that would have
9 been involved had we been forced to supply paper files and
10 medical records. We do have a database. That database is
11 populated with data that is supplied by asbestos claimants. By
12 and large, other than Celotex, that data is supplied to us
13 electronically. Each of the larger plaintiffs' law firms
14 maintains those records. In fact, they're required to maintain
15 those records. And they retain them in electronic form in
16 exactly the same format that we receive them.

17 But what we don't have control over is exactly what
18 they put in their submissions. We receive what they send us.
19 And what that means, in practical terms, is for us to respond
20 to a subpoena which we presume would issue from Delaware. But
21 I think, just to address Your Honor's earlier comment, we all
22 recognize that Your Honor is responsible for overseeing this
23 case and is making decisions about what is relevant and how
24 Rule 45 or Rule 2004 should be applied in this case. We all
25 recognize that.

1 If we are to respond --

2 THE COURT: Well, pause, please, Mr. Juris. That's
3 helpful but doesn't answer my question. When I am asked to
4 enforce a subpoena on behalf of another court, say, the
5 Northern District of Georgia -- I remember one instance where I
6 did that, one of many. I call up the home court, call up Judge
7 Drake or whoever, and say I got a relevance objection here.
8 Looks to me like it's relevant but do you have concerns about
9 it. And I would never in a thousand years think of stepping on
10 the toes of the home court on something where the home court
11 has a thousand percent more information about the underlying
12 issues than I, as an outpost court enforcing the subpoena,
13 would.

14 Are you or are you not reserving the right to
15 collaterally attack my order somewhere else?

16 MR. JURIS: No, Your Honor. And, in fact, all we
17 would insist upon --

18 THE COURT: Well, I had two choices and you answered
19 no. Which of those two is the no?

20 MR. JURIS: We do not anticipate collaterally
21 attacking your order today although it is our position that a
22 subpoena should issue, as a matter of law, from Delaware to our
23 clients if Your Honor orders discovery to proceed. That said,
24 Your Honor's description of what you anticipated happening is
25 exactly what I would anticipate happening. And for that

1 reason, we're here and we're arguing before you today. We
2 think that you're the judge who we should be making this
3 argument to. And that's why the papers we put in were
4 extensive and that's why we argued what we did. So our
5 expectation, while the subpoena nonetheless has to issue in
6 Delaware or in Texas, is that today is our day to make our case
7 to Your Honor. And we fully expect that that Delaware judge or
8 a Texas judge would be picking up the phone and talking to you
9 and asking what you would think about the outcome. So I don't
10 have any expectation that we'll be collaterally attacking Your
11 Honor's rulings here today.

12 THE COURT: I've heard much less equivocal answers to
13 my questions before, Mr. Juris. Is that what you're prepared
14 to give me.

15 MR. JURIS: We do not -- we will not collaterally
16 attack Your Honor's order. I don't know if I could be more
17 clear. We don't --

18 THE COURT: Now you're clear but it took you a while
19 to get to that point. Continue, please.

20 MR. JURIS: Certainly, Your Honor. I think the
21 question for Your Honor here today is how our burden of
22 producing materials compares with what the alternatives would
23 be. In other words, we are not the only source of this
24 information. And as I mentioned before, we get information
25 from claimants, we process them, we don't control what's in

1 there and, consistent with the request that has been framed by
2 the committee, if we were to do the kind of production that
3 they've asked for, we would nonetheless have to run a script,
4 figure out what the overlap is which, I think, presents some
5 real logistical problems, which I'll address in a minute. And
6 then we're going to have to review it and make sure that
7 material that's not called for by their request and it wouldn't
8 be confidential or otherwise not called for by an order from
9 Your Honor is extracted. And there's only one way to do that.

10 THE COURT: Well, you know, you said that in your
11 brief. Forgive me, but I could not for the life of me
12 understand that. To the extent that I agree with the
13 creditors' committee, I'm going to issue an order. So what are
14 we talking about on requiring an order or what you would do if
15 you didn't have an order? But you're going to have an order.

16 MR. JURIS: Understood. I'm just trying to -- I'm
17 trying to address Your Honor's question which I think is what
18 would discovery along the lines proposed by the committee
19 require of the trusts. And what I'm suggesting, Your Honor, is
20 that in order for us to respond, there are a number of steps,
21 the steps that we, in good faith, took to reply and to give
22 them the information they've sought. And what that would
23 entail would be, at first blush, a computer review. Mr.
24 Bentley's absolutely right. We have a sophisticated computer
25 system. We could pull up what the plaintiffs' lawyers sent to

1 us. But that wouldn't be the last step. What we would then
2 need to do would be to check that information, make sure
3 they're the right people. That requires someone from the staff
4 of the Delaware Claims Processing Facility to make sure that
5 they're the right person. That would require them to then
6 review the information and make sure that there isn't
7 information in that form that isn't nonresponsive or otherwise
8 confidential or wouldn't be parsed out as a result of Your
9 Honor's orders. And then that information would have to be
10 prepared to be sent over to the committee. Now, most of that
11 information, aside from Celotex, is supplied to the trust by
12 the claimants' lawyers electronically. And in addition to
13 that, the TDPs for all of the trusts, including TDPs that were
14 approved --

15 THE COURT: A TDP, for the record, is what?

16 MR. JURIS: A TDP is a trust distribution procedure.
17 These are procedures that govern the trust that effectively tie
18 the trust's hands, tell the trust what it's supposed to be
19 doing, what it's not supposed to be doing. They're approved by
20 the bankruptcy courts. And one in particular, the Owens
21 Corning TDP, which I attached to our papers, provides for a
22 mechanism, for what we're supposed to do, what the trust is
23 supposed to do when it receives a subpoena. And one of the
24 things that the trust is required to do, and I don't have any -
25 - I can't say we're not going to do it. Your Honor can

1 obviously order it and we have to adhere to Your Honor's
2 orders. But what the trust procedures say is that we have to
3 then go ahead and notify the claimants that we've received the
4 subpoena.

5 Now, as an aside, I would just note that while Mr.
6 Bentley makes light of the efforts that would be impaled to do
7 that, he has not suggested anywhere, in his papers or here
8 today, that they're prepared to take on that obligation. The
9 obligation would be ours. And that's not withstanding the fact
10 that the confidentiality order that they've offered up as a
11 model for the Court to use provides that, in a corresponding
12 circumstance, where a subpoena is issued to the committee that
13 GM wouldn't get that same kind of notice. So from my
14 perspective, we have pretty clear rules about what we have to
15 do vis-à-vis the actual claimants and it imposes a burden. Is
16 it impossible to comply with? No. We get subpoenas.
17 Typically, they're one-off subpoenas. And when we get a
18 subpoena, using the TDP procedures that have been imposed on us
19 that we're required to follow, we notify the claimants and give
20 them an opportunity to object because, after all, it's their
21 medical information.

22 What I'd like to suggest to Your Honor is that while
23 this information is in the possession of the trust and we could
24 produce it, isn't the better question why is it more difficult
25 and more burdensome, all things being equal, for the parties to

1 this action to get the same information through a source that
2 would have the same exact information. All they are asking
3 from us is what were the claimants paid and what did the
4 claimants submit. And since the claimants submit their
5 information electronically and since many of the claimants are
6 represented by the very same counsel, from my perspective and
7 from my clients' perspective, this is an exercise where we are
8 an interloper here and they can get the information, the same
9 exact information from another source.

10 THE COURT: Is that a euphemism for telling me that
11 the creditors' committee has to go to the individual 7,000
12 claimants or the lesser subset of them that are lawyers
13 representing 7,000 claimants?

14 MR. JURIS: It is, but I think that it's not as
15 difficult as it sounds, Your Honor, for this reason. I think
16 that if the outcome of today's hearing were that we were to be
17 able to supply Mr. Bentley with simply a cross-reference list
18 of the people who are claimants against GM and who have also
19 claims against the trust, that he would readily be able to
20 identify who he needs to be reaching out to. And I don't think
21 it would be the same kind of burdensome exercise --

22 THE COURT: You're seriously suggesting to me that
23 instead of going to one person to which all of the filings have
24 been directed, I have to go to 7,000 individual ones or the
25 lesser number of lawyers who represent 7,000 individual

1 claimants?

2 MR. JURIS: Well, Your Honor, the alternative is that
3 in any bankruptcy case, in any case in which estimation becomes
4 an issue, these 524(g) trusts end up -- will end up spending
5 their time responding to subpoena requests for information that
6 the claimants and the creditors, the asbestos creditors or
7 other creditors, of the bankrupt estate already have. And I
8 think from a systemic standpoint, the concern that I hear from
9 my clients is that they have limited resources. While they
10 have significant resources, the amounts of money that they have
11 available to pay the claims is less than the amount of claims
12 that they have against them. And so what this presents is a
13 very real administrative problem. It's very easy to say we can
14 just press a button on our computer and it'll spit out the
15 names. But it doesn't work that way. And there's both the
16 specific concern in this case but a systemic concern.

17 There's also a concern that we have of how to
18 reconcile the TDPs and the court orders that require us to
19 notify recipients of these subpoenas. One way or another,
20 someone has to notify them. So apropos of Your Honor's
21 comment, I don't think it's the case that we can simply ignore
22 the claimants. Someone is going to have to notify them. And
23 that burden will fall on my clients. And my only question is
24 who does that burden fall on. Does it fall on the trusts who
25 have limited resources who, in the case of Owens Corning, are

1 paying ten cents of every dollar for every claim which may have
2 its own macroeconomic lesson there as well. But set that
3 aside, they have limited resources and they have to get this
4 right. And so what that means is it's not so easy to say well,
5 we'll just produce all this information and send it along. And
6 if it turns out that we were wrong about something or we sent
7 the wrong information that we shouldn't have that we can just
8 say well, it's not our problem. The problem is we have a
9 limited mission. And that limited mission is bounded by the
10 rules that the bankruptcy judges created to govern what we do.

11 So, I don't mean to make light of the notion that --

12 THE COURT: The bankruptcy judges created or the
13 bankruptcy judges approved when the parties in those cases
14 submitted them orders for signature. You think the bankruptcy
15 judges devised these programs themselves?

16 MR. JURIS: Your Honor, I confess, I was -- I have
17 the luxury here of simply being brought in at the last minute
18 to deal with an emergency discovery dispute.

19 THE COURT: Well, I've been a judge for ten years.
20 And I bring a little bit -- and I've been a lawyer now for
21 forty, believe it or not. And I have a little experience as to
22 how the judicial process works. And maybe seven or eight times
23 in ten years, I've drafted an order from scratch and I've
24 crafted it thinking up all of the things that might go into it
25 and might not. But I'll not be giving away the store when I

1 tell you that lawyers submit orders for us to review and
2 ultimately sign, and I read them, even when they give me forty-
3 page debtor-in-possession financing orders or sixty-page
4 confirmation orders but I don't sit thinking up all of the
5 things and all of the procedures that would go into those
6 confirmation orders. Do you think Judges Fitzgerald and the
7 other judges who approved -- or Judge Lifland and others who
8 approved procedures for the implementation of asbestos trust
9 did it any differently than I would?

10 MR. JURIS: Your Honor, all I can say in response to
11 your question is regardless of the process that resulted in
12 those orders, I have to follow those orders. I don't have the
13 luxury of looking behind what the order says. And if the order
14 says I'm going to approve this plan and I'm going to approve
15 this TDP, then my clients don't have a choice. They have to
16 follow it. And -- unless a judge tells them you've got it
17 wrong and you should do it a different way. And so that's the
18 bind we're in.

19 One thought about the case that you mentioned earlier
20 today, the Chemtura case, my recollection of that case, Your
21 Honor, is that in that case the request at issue was made to
22 the lawyer for the claimants.

23 THE COURT: I had the luxury there, Mr. Juris, that
24 ninety percent of the claims in Chemtura were brought by the
25 Humphreys firm co-represented by Caplin & Drysdale, if I'm not

1 mistaken, which had needs and concerns that where, as a
2 practical matter, so easily implemented by dealing directly
3 with those two firms that I had a materially different lay of
4 the land in terms of the number of people who would need to be
5 pulled and would need to have input. And I'll stand corrected,
6 if need be, by you or anyone else, but it's my recollection
7 that by providing access and getting the cooperation of the
8 Humphreys firm and its co-counsel and four or five others that
9 I essentially captured the universe of diacetyl claimants.
10 That's pretty different. Isn't it?

11 MR. JURIS: Well, I'm not sure that I'm in a position
12 to know until we were to do a cross-reference. But, Your
13 Honor, my suspicion would be that when you actually ran the
14 numbers -- we could stand corrected, but I would imagine that
15 if we were to run a cross-referencing, we might end up in a
16 very similar position. Maybe it wouldn't be four. Maybe it'd
17 be five or six. But my understanding is that, from my clients'
18 perspective, a lot of the claims that they get are claims from
19 similar law firms and that there's a handful of major law firms
20 that submit an awful lot of their claims. It doesn't mean that
21 all of them are submitted by those firms. But if the end
22 result of this analysis we're to suggest that the exact same
23 information maintained by the law firms in electronic form
24 could be obtained from four, five, six or seven law firms with
25 appropriate notice, it would solve my clients' notice issue.

1 We would be out of this mix. You know, the reality here is we
2 don't want to be in this mix. We're here, we're responsive.
3 We don't want to be part of the asbestos wars notwithstanding
4 what Mr. Bentley said. In fact, my clients were created as an
5 outgrowth of the asbestos war to put an end to it with respect
6 to specific companies. They're done with the tort system. And
7 we have a limited mandate. And that mandate is to pay and
8 process claims.

9 If it turns out that the exact same information is
10 available through someone who has a direct and abiding interest
11 in the outcome of this, since we're talking about GM
12 mesothelioma claimants and their counsel. And they can get
13 that same information from them and avoid all of the
14 difficulties that that presents for us as we grapple with these
15 TDPs that we're required to adhere to. Then that strikes me as
16 a third way. Mr. Bentley gets the information he wants. We
17 don't have to be kicking the tires to make sure that we haven't
18 produced confidential information about claimants that wasn't
19 asked for or not ordered by Your Honor.

20 THE COURT: Well, pause, please. Because what a
21 claimant provides your processing outfit or, for that matter,
22 your trusts, that, by definition, isn't privileged, right? We
23 agree on that?

24 MR. JURIS: Correct, Your Honor, although I will
25 direct Your Honor's attention to the TDPs that we submitted,

1 some of which were approved by the bankruptcy courts which tell
2 the claimants that that information is settlement material
3 protected by applicable privileges. I think we --

4 THE COURT: Well, there are no privileges associated
5 with communications that proceed between two opponents. Am I
6 correct on that?

7 MR. JURIS: Ordinarily correct, Your Honor,
8 although --

9 THE COURT: Can you think of a single exception in
10 your ten, twenty or thirty years of practice?

11 MR. JURIS: Well, the only thing I would say, Your
12 Honor, not a privilege in a classic sense. Certainly from a
13 rule of evidence perspective, the trusts are set up as
14 settlement trusts and submissions are made by litigants in
15 order to get an offer of settlement.

16 But your point is well taken, Your Honor. We are not
17 claiming there's an absolute privilege here. At best, this is
18 a factor that factors into Your Honor's balancing of burdens
19 and the need which Your Honor has already addressed. So we're
20 not claiming here that it's privileged in that sense.

21 What I will say is when this issue has come up in
22 litigation before, and I would flag the Western Asbestos case
23 in which there's a request for information that's held by a
24 trust, Courts have found that the claimants, the people who
25 submitted their information to the trust, don't lose the

1 ability to claim, hey, that's my confidential information,
2 that's my medical information, merely because they submitted to
3 a trust.

4 THE COURT: Okay.

5 MR. JURIS: So I think recognizing the balancing that
6 Your Honor is undertaking here, the question that we would pose
7 is why can't Mr. Bentley get that information elsewhere. It is
8 easy to say this is 7400 claimants. It may be much less than
9 that but, candidly, once a cross-referencing is done and if we
10 were given enough real information, including full social
11 security numbers, to do that cross-referencing -- but let's
12 assume that the end result of that is that they can get that
13 information through someone else, meaning, the claimants'
14 counsel. Now they may claim, as they do in their brief, that
15 that's an imposition on claimants which I took as a positive
16 given that we were alleged to be in a stooge for the
17 plaintiffs' bar. From my client's perspective, if the burden
18 falls on the asbestos claimants and their counsel, that's where
19 the burden belongs, not on 524(g) settlement trusts. Their job
20 is to be a bystander. Their job is to be out of this. And
21 certainly not to be bound up in the GM bankruptcy.

22 I think if Your Honor's ultimate -- Your Honor, my
23 understanding is that, in rough -- and I don't think this
24 applies just to mesothelioma claims. This is more broadly --
25 that in the Congoleum case, approximately 122,000 claims were

1 filed. Sixty-eight percent of those claims were represented by
2 six law firms. And let me go back to where I started which is
3 how is this information supplied to us, why are we able to have
4 it in this format, why is it so easy for us to pull it up,
5 supposedly, electronically. It's because the law firms give it
6 to us. And they give it to us electronically and they download
7 it directly in to our systems. We don't play a role in that.
8 But if discovery is to proceed in a manner that is suggested
9 here, producing that information is going to require us to
10 review those records and actually go into those records and see
11 is someone's social security number there that ought not be
12 there. Did one law firm put in social security numbers next to
13 next of kin that we would all agree would need to be redacted.
14 And who's going to redact that? Ultimately, it's going to be
15 the trust and its counsel that bears that burden. And some of
16 that burden can certainly be recouped by paying cost and
17 defraying expense, but not all of it, because we have staff and
18 they're going to have to spend their time working on this. And
19 it's not going to work simply to have the expert for the
20 committee waltz in there and say, well, give me everything and
21 we promise to give everything back. And it's going to present
22 a lot of problems for us because when claimants get the notice,
23 if we're the ones who have to send it, that there's a subpoena
24 that's been issued for your records, who are they going to
25 call? They're going to call us. What are they going to tell

1 us? We object. We don't want you to produce it. And we're
2 going to have to produce it if the Court orders it. But
3 ultimately, that creates an administrative burden that
4 shouldn't be ours to bear. And if it were the case that this
5 was the only place to get this information, I could understand
6 a much different argument. But since the information is
7 available and it's available from people with a direct and a
8 binding stake in this bankruptcy, it shouldn't fall on the
9 524(g) trusts.

10 THE COURT: Anything else?

11 MR. JURIS: Your Honor, one last point that did occur
12 to me is that in the Chemtura -- Your Honor mentioned
13 initially, in the colloquy with creditors' counsel that you
14 were guided by your experience in the Chemtura case. In
15 addition to being a case in which it was really counsel for
16 claimants that was responding to the request, I also know that
17 in that case, the information was disaggregated and didn't
18 present the same kinds of confidentiality concerns. Surely it
19 presented concerns.

20 THE COURT: Well, pause, please, Mr. Juris. If I had
21 a volunteer from the asbestos claimants' community who, as in
22 Chemtura, had ninety percent of the claims and who volunteered
23 to give me a statistical abstract of the type that was mutually
24 found satisfactorily there, I'd give that very serious
25 consideration. But nobody's given me that offer yet.

1 MR. JURIS: I appreciate that, Your Honor. I guess
2 what -

3 THE COURT: The Humphreys firm, while not being the
4 only claimant there, was by any objective measurement the
5 dominant counsel for the plaintiff community in that case.

6 MR. JURIS: I appreciate that, Your Honor. I guess
7 my point is a little different which is that in that case, you
8 still had issues about the rights of underlying claimants
9 and -- who had submitted their information. But in that
10 circumstance, I think that presented less of an issue than here
11 because here, in order for Mr. Bentley to do what he says he
12 wants to do with this information, he has to be able to link up
13 individual claimants to GM files. That's the point of his
14 exercise. And in the Chemtura case, those individual
15 claimants, they didn't have any identifying information
16 provided. What they had provided was their medical situation
17 and some data. But it didn't provide names and it didn't
18 provide social security numbers. And my suggestion to Your
19 Honor is that presents a host of different confidentiality
20 issues. It still presents them. And I don't mean to make
21 light of it. And I saw Your Honor's order and the protections
22 that Your Honor applied in that case. I guess what I'm
23 suggesting is in our circumstance, if discovery were to proceed
24 against the trust, they would have to provide detailed claim by
25 claim information electronically, to be sure, about individuals

1 in such a way that the creditors' committee could link up that
2 information to GM's information. Otherwise, it doesn't do them
3 any good. And in that circumstance, the privacy concerns and
4 the concerns for what happens to the claimants, what role do
5 they play, what do we have to do to do right by them and why
6 should the burden fall on us to be doing whatever that is.
7 That presents distinct issues in this case and they're an issue
8 that, I think, should factor into the Court's assessment of the
9 burden.

10 THE COURT: Very well. Thank you.

11 MR. JURIS: Thank you, Your Honor.

12 THE COURT: All right. I'll hear from Ms. -- oh, Mr.
13 Swett --

14 MR. SWETT: I'm sorry. I'm out --

15 MS. STUBBS: That's okay.

16 MR. SWETT: -- of order, Your Honor.

17 MS. STUBBS: That's all right.

18 THE COURT: All right. But just a minute, Ms.

19 Stubbs, before you begin, I have Chemtura stuff that I
20 scheduled for 11 unduly optimistically believing that we
21 wouldn't take this much time here. I see at least at least one
22 or two people in Chemtura but I don't see the principal
23 players. Could I look for a volunteer to go out into the hall
24 and find out how much Chemtura thinks they're going to need,
25 because if, as I imagine, that Chemtura Canada's filings can be

1 done in ten minutes, fifteen tops, and if there is a consensual
2 resolution on the exit financing, then I might be able to
3 interrupt GM long enough to deal with Chemtura and then
4 continue again with GM.

5 Ms. Labovitz, can I ask you to come up for a second,
6 please? Knowing the lay of the land as to how much of your
7 stuff is going to be contested or not, do you have a sense as
8 to how long you're going to be?

9 MS. LABOVITZ: I don't think it will be long, Your
10 Honor. We have a fully consensual presentation on the exit
11 financing with just one brief item to put not he record as
12 requested by the equity committee. And then, Your Honor, we
13 have the first day motions for Chemtura Canada as to which I
14 believe, again, there are no objections but the U.S. trustee
15 has asked us to make some clarifications on the record.

16 THE COURT: And as to which on one relatively minor
17 issue I have a potential concern but we can resolve that pretty
18 quickly.

19 MS. LABOVITZ: Okay.

20 THE COURT: Ms. Stubbs, before I get you going,
21 because I don't want you to be interrupted, I wonder if the
22 people who are here on GM can just sit in place. If the ones
23 who are here on Chemtura can have seats and you can get right
24 into your stuff, Ms. Labovitz.

25 MS. LABOVITZ: Absolutely.

1 THE COURT: Do you have everybody here? It's five
2 minutes before your kick-off time.

3 MS. LABOVITZ: Yes. Your Honor, I believe we have
4 everyone who needs to be here.

5 THE COURT: Then would you continue, please?

6 (Motors Liquidation hearing interrupted to hear Chemtura)

7 (Resume Motors Liquidation hearing)

8 THE COURT: All right. I want to apologize to you
9 guys once again for what you had to go through. I think we're
10 up to Ms. Stubbs. I'll hear from you next. Oh, wait a second.
11 I don't have Mr. Bentley. Thank you. Let's pause for a
12 minute. Ms. Stubbs, you can come up but before you start
13 talking, let's wait for him, please.

14 (Pause)

15 MS. STUBBS: Thank you, Your Honor. As you know, I
16 represent the Manville Personal Injury Settlement Trust and
17 Claims Resolution Management Corporation. As you mentioned in
18 your preliminary statement, we had objected to the discovery
19 request, the motion, on the basis that a license application
20 was pending and had not yet been acted upon. After we filed
21 the objection, we received notice that one of the parties that
22 is obligated to consent to the license did not consent and we
23 advised Your Honor of that and the applicants of that.

24 THE COURT: That nonconsent didn't come as a surprise
25 to you, did it?

1 MS. STUBBS: The trustees actually did not know
2 whether or not the parties would consent or not so they
3 submitted the application to those parties and received a
4 response after we submitted our objection. So --

5 THE COURT: Okay.

6 MS. STUBBS: -- that issue has been resolved. With
7 respect to the other objections, we will adopt the arguments
8 asserted by the other trusts.

9 THE COURT: Oh, okay. Mr. Swett?

10 MR. SWETT: Yes, Your Honor.

11 THE COURT: Did you want to be heard?

12 MR. SWETT: Yes, sir. Your Honor, Trevor Swett,
13 Caplin & Drysdale for the official committee of unsecured
14 creditors holding asbestos related claims. I'm going to
15 address my remarks, Your Honor, subject to whatever questions
16 you may have, to the need to measure the burden that would be
17 appropriate for the discovery that has been framed here in the
18 context of an aggregate estimate of the -- of what GM would pay
19 in the tort system to resolve all its pending and future claims
20 which, I take it, the parties have kind of a violent agreement.
21 That's what this process is supposed to end up with. That's
22 what we're shooting at. And I ask the question, why in that
23 context individual payment amounts warrant any burden at all to
24 elicit from a third person, from a debtor that has its own very
25 expensive settlement history. This is not like Chemtura, Your

1 Honor, where the debtor there was faced with the need to
2 estimate some 375 diacetyl claims in the absence of any
3 significant settlement history at all on its part. And so,
4 they look to third party settlement information conveniently
5 collected by the law firm that represented most of the
6 claimants. And they accepted it in an aggregated form stripped
7 of any identifying detail with regard to individual claimants.
8 Why isn't the UCC here framing its request in that way and
9 pitching it at that level which is the aggregate estimate which
10 is the only thing that we're now engaged with?

11 THE COURT: Your firm represented the Humphreys firm,
12 didn't it?

13 MR. SWETT: Yes. My partner, Jeffrey Liesemer did.

14 THE COURT: Yeah. I've seen a lot of Mr. Liesemer.

15 MR. SWETT: Yes, sir.

16 THE COURT: And me and his co-counsel from -- was it
17 from Missouri? I'm not sure of the exact state?

18 MR. SWETT: I think so, but, Your Honor, I'm not
19 personally involved in the case.

20 THE COURT: Yeah. Had the ability to prepare up a
21 nice workup for us covering ninety percent of the claims which
22 was not a hundred percent but a whopping number and which also
23 gave us a statistical comfort that was of very great value. I
24 don't have a law firm that I can look to that can give me that
25 kind of a workup here that's going to cover ninety percent of

1 the claims against old GM or anything close, do I?

2 MR. SWETT: No, but my point, Your Honor, is that
3 that aggregate information already exists and is in the public
4 realm. It exists and is in the public realm in the form of the
5 trust distribution procedures of all the trusts, most of which
6 are on the internet, all of which are available which set forth
7 what are known as the scheduled claim values that each trust
8 will pay, which claim values are derived from the particular
9 tort predecessor of that trust and its history in the tort
10 system.

11 So that, for example, if you turn to Exhibit J of the
12 trusts -- the Delaware trusts' exhibits, that would be the
13 Owens Corning and Fiberboard Trust, trust distribution
14 procedure. And on page 28 of that document, it sets forth the
15 scheduled claim values that that trust will pay on expedited
16 review for any mesothelioma claim that satisfies the exposure
17 requirements. It says right there in black and white that
18 that -- that the Owens Corning Trust fund will pay 215,000
19 dollars to those claimants. It says right there in black and
20 white that the Fiberboard subfund of that trust will pay
21 135,000 dollars for a mesothelioma claimant that qualifies
22 under the terms of the TDP.

23 Now, those are the numbers that drive the averages
24 because the trusts have the statutory mandate to preserve their
25 assets such that the last claimant forty years from now will be

1 treated fairly in relation to the first claimant on the queue
2 when the company emerged from bankruptcy. And that means that
3 the trustees have to manage the affairs of that trust to bring
4 the claims in within those averages. And even where a claimant
5 applies for what is known as individual review, the scheduled
6 claim values drive the range in which that claimant can
7 recover. So that TDP scheduled values are the averages. And
8 it's the averages that matter for aggregate claim estimation
9 which is what we're about here.

10 Similarly, Exhibit K of the trust documents, at page
11 26, this is another example. It is the USG TDP. It says that
12 that trust will pay 150 -- the scheduled mesothelioma value of
13 that trust is 155,000 dollars.

14 Now, let me make one point of clarification. These
15 trusts pay pennies on the dollar. These defendants were
16 insolvent. When the trusts come on stream and begin paying,
17 they will not be paying the full share of the tort predecessors
18 that the trusts stand in the shoes of. They will be paying
19 some fraction of it which causes one to question intuitively
20 whether the overall theory of relevancy sponsored by the UCC
21 makes any sense. But, Your Honor, has directed me to direct my
22 comments at the issues of burden and I'm putting that in the
23 context of the aggregate estimation.

24 THE COURT: Burden, and an additional one, Mr. Swett,
25 which if you believe that the safeguard's to protect individual

1 litigants down the road are inadequate, I care about your views
2 in that regard as well.

3 MR. SWETT: Yes, sir, I understand. Let me just
4 complete my thought on the payment percentage.

5 THE COURT: Go ahead.

6 MR. SWETT: To figure out what the OC trust will pay
7 on average to OC mesothelioma of victims, the UCC would have to
8 apply the trust payment percentage to the scheduled value. The
9 scheduled value is by analogy the allowable amount, the payment
10 percentage tells you how much that's going to be discounted
11 before that claimant receives a cash payment.

12 In the Owens Corning case it's forty percent as of
13 now. In the Fiberboard Trust it's twenty-five percent. In the
14 USG Trust it's forty-five percent. In the Manville Trust it's
15 seven and a half cents. In the GAF Trust it's seven and a half
16 cents. These are, indeed, underfunded trusts. They are
17 limited funds that stand in the shoes of insolvent defendants.

18 With regard to the aggregative significance of the
19 TDB scheduled values when conjoined with the payment
20 percentages, that information satisfies any legitimate need
21 that the UCC has for payment of information at all. There is
22 no burden, not even an incremental step beyond that, that could
23 be justified in relation to what is already known.

24 With regard to protecting the rights of individual
25 claimants, let me first observe that that is vital for the

1 estimation proceeding to remain focused as it ought to be on
2 the aggregate.

3 If we get into a discovery arm's race, focused on
4 individual claims, what the particular exposures of this Mr. X
5 who claimed against GM and also OC and USG were, what his
6 health situation was, what his payment amount from each of
7 those trusts was, what the comparative force of his exposure
8 evidenced, as it gets USC product v. GM products was, we will
9 lose the proper focus of this proceeding. And it will become
10 impossible in fairness to hold this case to the desired
11 expedited track that all parties hope for for confirmation of a
12 plan of liquidation.

13 We will be forced to go their too. And to take
14 exception to the inferences that Mr. Bates, on behalf of the
15 UCC, would draw from the granular of particulars of individual
16 claims. From the standpoint of maintaining the focus of the
17 aggregate estimation proceeding where it ought to be or the
18 aggregate, the discovery is not only unduly burdensome it is
19 quite counterproductive and holds the seeds, for lack of a
20 better term, discovery arm's race that the Court would need to
21 keep close tabs on while also being evenhanded and fair to all
22 parties, so that people are not forced to deal with information
23 that they haven't had a chance to respond on.

24 Let me turn now to the issue of protecting the
25 individual claimants. There is only one real way to do that

1 with regard to the payment information, which is the most
2 sensitive information that they've requested. And that is to
3 strip away all identifying detail that would tie any particular
4 payment to any particular claim. I submit, again, they don't
5 need that given that they know what the average payments are
6 from each trust according to -- by reference to the TDPs and
7 the payment percentages. But these things in the tort world,
8 and the hard fought litigation between tort claimants who
9 believe strongly in their claims and corporate defendants --

10 THE COURT: Pause, please, Mr. Swett. You said strip
11 away the identifying detail, presumably that meant the dollars
12 to a particular litigant?

13 MR. SWETT: Yes.

14 THE COURT: Were you talking about any other kind of
15 identifying detail besides dollars to that litigant?

16 MR. SWETT: What I meant was it would be possible for
17 the respondents to construct an anonymous matrix rather like
18 the one in Chemtura.

19 THE COURT: You think they could do that?

20 MR. SWETT: I think they could. With regard to the
21 information that they have, which is all they could respond
22 with.

23 The Manville Trust is colloquially thought to have
24 about ninety percent of the claims that existed against all
25 manner of defendants, including GM. We don't know that but

1 it's a fair assumption based upon thirty years of history.

2 So one can imagine a reporting divide that identifies
3 by anonymous reference which GM meso claimants also claim
4 against a given trust. And to report for that set as a whole
5 an average payment amount. That would be possible, and it
6 wouldn't implicate the individual's rights.

7 THE COURT: That's intriguing Mr. Swett, but there's
8 an inconsistency between the position that you just articulated
9 and what they're telling me, which is that all of this stuff is
10 work and basically what you're proposing is laying more work on
11 them, whereas otherwise, all they would have to do is do a data
12 dump on the claims that were filed against them and the dollars
13 that were paid.

14 I assume this isn't your idea which hasn't been
15 blessed by the people who are the ones who would be asked to
16 provide the information?

17 MR. SWETT: I haven't yet vetted it with the trust
18 administrators. I believe it would be feasible. There is no
19 cost-free way to provide this information while protecting the
20 individuals. My present comments are aimed at underscoring the
21 importance of protecting the individuals. I don't represent
22 them; I represent the constituency as a whole. I am not able
23 to articulate fully the prejudice that an individual claimant
24 would have by having his prior settlements with third-party
25 defendants leaked out into the tort system.

1 I will say this, the discovery that these folks are
2 seeking here has a lot to do, not so much with the particulars
3 of this case, as with what is going on as Mr. Bentley referred
4 to in the tort system among the remaining solvent defendants
5 and the claimants, who also have trust claims.

6 The defendants don't like the fact that under the
7 applicable state laws they don't get settlement information
8 from co-defendants unless and until they suffer a judgment. By
9 and large, that is true. It's certainly true in New York.
10 There is an illustrative case called ABF Capital Management,
11 decided by Judge Sweet back in 2000, it's Westlaw 191698, where
12 the demand from co-defendant securities fraud defendants was to
13 get at a settlement agreement made by one of their joint co-
14 defendants who was getting out of the case.

15 Judge Sweet considered the arguments, came to rest on
16 the idea that if there was ever going to be any right to elicit
17 the settlement terms of that selling codefendant by the
18 remaining litigating defendants, it would only be after a
19 judgment and only for purposes of molding -- after verdict and
20 only for purposes of molding a judgment so as to give credit
21 against the verdict for the settlement amount or the settling
22 defendant's equitable share.

23 Now, in GM's history there are very few trials.
24 Everyone would acknowledge that by and large the claims history
25 of GM is a settlement history. No one would contend that

1 that's going to change drastically in the future.

2 So, ironically, what the UCC is asking you to inflict
3 burden for is discovery that they would not get in the tort
4 system, and we're supposed to be measuring their resolution
5 costs in the tort system, which carries with it the conceptual
6 framework that you are supposed to view the claims through the
7 prism that the rules would apply in that system. And you're
8 supposed to do a mega extrapolation of the values in the
9 aggregate of resolving all those claims in that study.

10 And, here, by going at individual payment information
11 for claimants who are not before you they are making a big end
12 run around the rules of the tort system. And while I
13 appreciate that you have certain notions of the relevancy in
14 the discovery context that you've embraced, I predict to Your
15 Honor, that we will face in the further evolution of this
16 proceeding similar issues in the slightly different context of
17 probativeness and admissibility. Because what they are doing
18 is to subvert the tort system rules that must control the
19 valuation of the claims in the aggregate estimate. And no
20 burden is justified by that exercise.

21 Now, to test my hypothesis of the misfit between the
22 discovery requested and the purposes of this estimation look to
23 Exhibit A of the reply that the UCC has filed. You will see
24 there the work of an insurance counsel.

25 THE COURT: I understood that. But I got to tell

1 you, and the next thing you're going to tell me is that this
2 insurance counsel; this guy who writes this article is in the
3 business of fighting the plaintiff's bar and asbestos cases.
4 But I got to tell you that the perspective of the plaintiff
5 bar, which it is at least alleged, had a meaningful role in
6 creating these trusts, is one with which I have equal --
7 distrust isn't exactly the right word. I take both of the
8 extremes positions with a grain of salt.

9 MR. SWETT: Entirely appropriate that you should do
10 so, as long as you're willing to listen with empathy to the
11 perspective of that constituency.

12 THE COURT: Well, it -- but -- you mean by listening
13 with empathy is not screwing the individual litigants in their
14 individual tort suits. I thought I said from the get-go that
15 that's what I cared about in Chemtura and what I care about
16 here. But what we got to talk about is the appropriate way to
17 skin the cat so that I, not having an ax to grind in either
18 direction, can get the right result.

19 MR. SWETT: I understand, and before I pass more
20 specifically to that point, I would like to complete my thought
21 on what really drives this discovery. You heard Mr. Bentley
22 accuse the plaintiff of manipulations and having an undisclosed
23 agendas behind their discovery objections. But he, himself,
24 told you that a ruling here, allowing them to get at this
25 information through these trusts would be a hurtful ruling for

1 the plaintiffs in the tort system. And there is no occasion
2 for the Court to stray into that here. All care should be
3 taken not to get into those weeds.

4 Now, if we go back to the idea on the payment
5 information of stripping out -- of giving them aggregated data,
6 not specific to any claim, constructed on the basis of the set
7 of GM mesothelioma claimants that each trust would identify,
8 assuming that were cost-effective and not horribly costly in
9 relation to what the UCC is asking, well, that would be a
10 reasonable accommodation. And it would be effective because
11 there is no way that any individual would ever have to fear
12 that when it took -- came to squaring off against GM or at
13 another case against Garlock or Charlie Bates is also the
14 expert, or Bondex where he's pursuing the same things, that
15 they would never be prejudiced in liquidating their claim
16 against any of those defendants.

17 The only absolute security is -- can be achieved here
18 at that incremental expense, and it would also have the
19 salutary virtue of framing the information at the appropriate
20 aggregative level for the purposes of this Court, and prevent
21 its abuse in other courts with other purposes.

22 Now, I'm aware that there's been an offer to confine
23 the uses of this information to the purposes of this case and
24 that's fine, but something more is needed. The expert appears
25 all over the place; he and his firm are holding themselves out

1 as expert in the tort system and what the trust will pay.
2 Which causes one to wonder why he thinks he needs individual
3 payment information here, that's another point. My point now
4 is there tends to be leakage and we can prevent it. And we
5 ought to prevent it, and it fits better if we prevent it with
6 the purposes of this exercise aggregate estimation anyway.

7 With regard to the proofs of claim I have one point
8 similar in content to what I just said about the payment
9 information. And that is that when measuring the burdens on
10 these pennies on the dollar trusts, and the inconvenience to
11 them of being held out as sort of open season discovery targets
12 for any defendant or bankruptcy tort defendant who wants to go
13 there and inflict those costs on them, you ought to consider
14 what information is already available.

15 In the tort system it was GM's theory that it was
16 merely a peripheral defendant, that the really culpable guys
17 were those other guys; Owens Corning, USG, GAF, Manville, all
18 those other guys. And they all went into bankruptcy.

19 Now, did GM forget about them when they went into
20 bankruptcy? Of course not. His whole theory was we're not --
21 we have little, if any, culpability here, little, if any,
22 product exposure. It's the friable stuff that those guys made
23 that caused these injuries.

24 Well, just because those defendants were in
25 bankruptcy did not prevent them from exercising their rights

1 against the claimants in the tort system to take discovery.
2 And it did not want their economic incentives to do so because
3 they were interested in developing arguments that they could
4 make to the plaintiff's lawyer, or, if need be, the court or
5 the jury in the end, diminishing their own relative fault and
6 elevating that of the absent parties. Trying the empty chair
7 is by no means a novel tactic in the tort system. And GM had
8 the economic incentives and the discovery tools available to
9 develop from each claimant his work history, the products he
10 came in contact with to explore the testimony of coworkers on
11 those jobs.

12 This is a mature tort, these facts and circumstances
13 are largely out there to be explored by the defendants in well
14 trod discovery paths. That was our point in the brief, Your
15 Honor, that the exposures, the relative culpability of other
16 defendants and so forth is baked into the GM settlement date.
17 Because when they decided in a given case that it was in their
18 enlightened self-interest to compromise a claim at a certain
19 amount of money. It was with the benefit of whatever
20 information they had developed or could had they thought it
21 economically worthwhile developed in the tort system.

22 So the idea that they need to go explore the proofs
23 of claims in the third party trust in order to find out who had
24 other exposures is not correct. And one way to approach that
25 issue, while respecting the rights of the individuals, is to

1 require them to plum the resources of GM, including its claim
2 data and have a more concrete showing that it is inadequate for
3 that purpose, then they have yet made, before burdens are
4 inflicted on these trusts.

5 Now, if you pass that question it would be worth
6 giving thought to a way in which an anonymous not identified by
7 individual claimant basis. The trust could respond with
8 aggregated information. Now, that's a little trickier, it
9 would require a little more thought in consultation with the
10 parties, but I believe that certainly the identities of the
11 individuals attached to these proofs of claim forms could be
12 stripped out as long as the trust were representing and there
13 were some means of corroborating that the population of the
14 claim forms that they were representing corresponded to
15 individuals who had also claimed against GM, their purposes
16 would be served, but the individual rights of the claimants
17 would be protected.

18 THE COURT: Pause, please, Mr. Swett, because you
19 anticipated, or at least you tickled the issue that was a
20 matter of concern to me.

21 There's a cliché out there about trust but verify.
22 And I don't remember, though your partners, Mr. Liesemer
23 probably does. What we established in Chemtura as a means for
24 verifying the aggregation that the Humphrey and Caplin &
25 Drysdale firms did in Chemtura to give not so much to me, but

1 the people who were on the receiving end of that information,
2 comfort that the aggregation they were getting was reliable.
3 Do you have any knowledge that's not speculation as to how that
4 was done in Chemtura for any similar response on what would be
5 a fair method here?

6 MR. SWETT: I have no specific information other than
7 what I saw in the order. And if I understood it correctly,
8 there was another committee that was permitted to audit but not
9 shape the contents of the anonymous matrix, or the backup to
10 the anonymous matrix.

11 THE COURT: I'm not remembering that from my
12 management of the Chemtura case, and having trouble thinking
13 who that committee might have been, or who that party might
14 have been.

15 MR. SWETT: Your Honor, after I sit down I can pull
16 out the exhibits which I think have your order, or the
17 transcript.

18 THE COURT: I'm not sure that the order would do it,
19 maybe the transcript would, or maybe stuff that goes on in
20 conference rooms of the world would reveal that. But --

21 MR. SWETT: We have it --

22 THE COURT: -- your idea, while it's certainly -- or
23 at least arguably worth of consideration, would need an
24 effective verification mechanism to make it affective, I think.

25 MR. SWETT: I understand, and I think we could put in

1 place, if we put our heads together, some means that would
2 corroborate the integrity of the date while protecting the
3 individual rights. And that in the context that would be a
4 justified measure if you think this discovery should go
5 forward.

6 THE COURT: Continue please.

7 MR. SWETT: Your Honor, I think I said pretty much
8 all I need to, other than this. Discovery is often an
9 intensely practical process, where rights are balanced. And I
10 take it that that's Your Honor's frame of mind. We stand ready
11 to work with the trusts and the UCC. Our perspective will be
12 that of protecting the rights of individual constituents and
13 holding the scope to the stated purposes. But we will not
14 obstruct it, we will cooperate in an effort to make it -- to
15 make that information come forth in an appropriate forum for
16 this proceeding, if as you seem to have it in mind, you think
17 it should come forth. But we do suggest to Your Honor that
18 pausing and giving intensely practical consideration to
19 protecting the rights of the individual claimants is
20 worthwhile.

21 THE COURT: I understand, Mr. Swett, but before you
22 sit down, as a matter again of reality, I put my time and
23 effort into matters that I need to decide. And when matters
24 resolve themselves consensually I don't put as much attention
25 to.

1 Refresh my recollection as to what you asked for in
2 your Rule 2004 request and what was done there vis-a-vis, both
3 burden and protection of confidentiality. My memory, albeit
4 dim and possibly mistaken, is that you wanted discovery from
5 Old GM and New GM, am I correct in that?

6 MR. SWETT: Exclusively of those sources.

7 THE COURT: And what measures did you put in place,
8 if any, to address confidentiality insofar as that information
9 might be used in a one-on-one litigation?

10 MR. SWETT: There is a confidentiality agreement that
11 restricts the uses to the estimation. Provides that the UCC
12 can have the agreement upon the execution of a confidentiality
13 undertaking.

14 In terms of -- that negotiation, Judge, was really
15 about expedition and scope. We reserved our rights to take
16 federal rule discovery if it becomes a contested proceeding.
17 But we were rather forcefully reminded by the debtor that the
18 idea here, and this goes to the present stage of the case, was
19 that the parties would get the database and have the chance to
20 supplement it if they had additional inquiries of the debtor
21 and New GM. It turns out that New GM is the party that really
22 has the information. And then go off with their experts and do
23 their preliminary work and then come to the table. And then we
24 would see --

25 THE COURT: And try to have a negotiation that would

1 obviate the need for a contested matter for me to estimate?

2 MR. SWETT: Yes. To have a negotiation, see how wide
3 the gap is, is it one that could be bridged by a negotiation or
4 must we go to battle. So having been forcefully reminded of
5 that agenda, having in the first instance confined our
6 inquiries to the sources that seem most germane, GM and New GM,
7 we also negotiated scope limitations that would allow certain
8 data to come forth expeditiously, certain searches of data that
9 isn't electronic to be made and go on with the preliminary
10 estimate to accelerate the date at which we come to the table
11 prepared to discuss the problem with the other parties in
12 interest.

13 THE COURT: All right. And to what extent did you
14 put in mechanisms so that whatever you got from Old GM and New
15 GM would not find its way into the hands of the plaintiffs tort
16 orders of the world?

17 MR. SWETT: We have -- I'm speaking from memory, now,
18 Judge, and we would be prepared to offer most favorite nations
19 treatment in terms of protection to the same level that emerges
20 from whatever happens here with regard to the UCC's case.

21 THE COURT: I take it you agree that what's sauce for
22 the goose should at least theoretically be sauce for the
23 gander?

24 MR. SWETT: I have no problem with that proposition,
25 Judge. Our information by and large is in the form of data or

1 documentation that's not specific to any case. The data is
2 because of one of the things that we were interested in
3 exploring was the extent to which claims were handled under a
4 joint defense process with Ford or Chrysler. Another thing we
5 wanted to know about was the extent to which cases were settled
6 across large groups of claimants. And GM told us that, you
7 know, they could respond to that. The particulars I'm not at
8 liberty to discuss in open court. But it doesn't seem to be
9 burdensome, and it doesn't seem to have a whole to do with the
10 facts of a particular claimants demand or claim upon GM. It
11 has to do with GM's claims handling processes which we believe
12 are the key to shaping the outcomes that are reflected in the
13 historical claims data.

14 THE COURT: More questions, forgive me.

15 MR. SWETT: Yes, sir.

16 THE COURT: Am I right in assuming that a good chunk
17 of GM's alleged liability arises from brakes?

18 MR. SWETT: There are I think three well documented
19 sources, brakes is one. More categorically, friction products;
20 which would include brakes and clutch facings and parts, are a
21 major source.

22 Another source is locomotive. GM made locomotives
23 and they had insulation in the breaks. One of the comments you
24 may have noticed in the UCC's brief was that we're not like
25 railroad makers, in fact, they made railroad cars or

1 locomotive --

2 THE COURT: I remember when I was a kid I had a red
3 and silver F3 locomotive that had GM on it.

4 MR. SWETT: Right. There's another source which is
5 called premises liability, which is exposure by workers on --
6 in properties owned by GM to asbestos dust.

7 THE COURT: Now, one thing I learned in the 363 sale
8 was that a good percentage, I don't remember how much, I think
9 it was the majority, actually, of the GM vehicle might actually
10 be subassemblies made by the supplier community. Was there one
11 or more brake suppliers or clutch facing suppliers that
12 provided brakes or clutches to GM?

13 MR. SWETT: GM was an original equipment manufacturer
14 of those things. I don't know yet the extent to which it
15 acquired those products from third parties. It supplied those
16 products to a lot of third parties, including other automobile
17 dealers. And, of course, shops that kept parts on the shelf.

18 THE COURT: Like repair shops.

19 MR. SWETT: Right. I don't know the extent to which
20 GM friction products were manufactured by independent persons.

21 THE COURT: Okay, thank you. Mr. Bentley, reply?
22 Oh, before I do, Mr. Karotkin, I assume -- I don't know if you
23 want to be heard or not?

24 MR. KAROTKIN: Can I go last?

25 THE COURT: If you want. Go ahead, Mr. Bentley.

1 MR. BENTLEY: Your Honor, I would propose to address
2 first the relevance issues raised by Mr. Swett, and then turn
3 to the issues of burden and the like raised by the trust and
4 the claim facilities.

5 And if I may, Your Honor, in order to address the
6 relevance issues, with the Court's permission I'd like to hand
7 up a one-page demonstrative exhibit. I shared this with
8 counsel for the other parties on Friday afternoon and have
9 received no objections to my using this as a demonstrative aid.

10 THE COURT: All right. Hand it up.

11 MR. BENTLEY: Your Honor, this is compiled using the
12 information in GM's asbestos claims database, which all the
13 parties have. And it shows one thing principally, that is the
14 asbestos expenditures each year, the indemnities expenditures,
15 not defense costs, incurred by your -- by GM during the period
16 from 1990 through 2008, that being the last full year before
17 its bankruptcy filing. And we offer it to the Court to
18 illustrate one fact that we think is perhaps the central fact
19 in this estimation -- that will inform this estimation
20 proceeding. And that is if Your Honor compares the expenditure
21 levels in the 1990s they're relatively tiny; one or two million
22 dollars in almost every year. And then in around the year 2000
23 there's an uptick followed by a very, very big spike upwards
24 peaking at about fifty million dollars in 2003, followed by a
25 gradual decline.

1 And as we get into estimation Your Honor will learn,
2 if you've not been exposed to this already, one of the central
3 issues in any estimation is you look at the historical claim
4 values and you then apply them with adjustments to projected
5 future claims. And in most cases, including this, the bulk of
6 the debtors' liability tends to be on account of future
7 asbestos claims. Most of the claims have not yet been filed.
8 They're ten/twenty years out.

9 In many cases there's not a huge dispute over what
10 will the value of the future claims be. The assumption is that
11 because in many cases in the past -- the past claim values have
12 followed a relatively stable trend line. There's, therefore,
13 not a huge dispute over what will they be in the future. All
14 the parties agree they'll continue to follow the relatively
15 stable trend lines. Any dispute are cabined within the
16 relatively narrow area.

17 If you look at this case, and this chart, what jumps
18 out on you is how on earth is the Court going to solve the
19 conundrum, the puzzle that will be at the core of the
20 estimation hearing? What will the future value be of asbestos
21 claims? Will future values mirror the experience in the 1990s,
22 when GM was, in fact, a peripheral defendant, it was spending
23 tiny amounts to resolve asbestos claims? Or will it, instead,
24 mirror the experience over the past ten years? And you'll find
25 that the experts will, in effect, lay a pencil on this graph.

1 And we will argue we will lay a pencil across the 1990s. And
2 we'll say Your Honor there's very strong grounds to believe
3 that the past decade was an aberration, future values will
4 mirror the 1990s. Alternatively, we may say, Your Honor, look
5 at the scope declining from 2002 down to 2008, future values
6 will continue to follow that trend. And you'll hear from Mr.
7 Swett and his experts, oh, no, you should lay your pencil this
8 way from 2002 -- sorry, 2000, up to 2008 what we have is an
9 ascending trend.

10 The amount of the swing in Your Honor's eventual
11 estimation ruling based on your answer to this question, which
12 of these options you pick, will be absolutely enormous. And
13 this is why we argue the debtors' estimation is very small, and
14 the hundreds of millions, if that. And Mr. Swett, you'll hear
15 will argue it's in the billions of dollars. Very big swing.
16 Principally explained by this issue.

17 So the question is how will Your Honor pick? And we
18 submit that in order to select the time period that's
19 representative, that as a predictor of future claim values,
20 step number one is to understand the reasons for the swings and
21 claim values in the past. Why did they spike in and around
22 2000? Why did they then begin to come down pretty steadily
23 after 2003? And we have a theory as to why that is and the
24 discovery we're seeking goes to the heart of that theory. And
25 the information we're seeking we think is necessary in order

1 for Your Honor to evaluate the merits of our theory and neither
2 accept it or reject it.

3 And here's our theory. We think it's quite obvious
4 what the reason for the spike was. Namely, in the year 2000 a
5 very large number of the principal asbestos defendants; Owens
6 Corning, Armstrong, others, filed for bankruptcy. A large
7 parade of other principal defendants filed the next year. And
8 more in 2002 and more in 2003. All of a sudden the plaintiffs,
9 who had been suing those defendants, they're no longer in the
10 tort system, they're forced to look to new defendants; GM,
11 which had been a peripheral player, had been sued on average
12 forty suits a year during the '90s, on average. All of a
13 sudden 850 suits per year. And not only that, but it's a
14 target defendant. So it can't resolve these claims for
15 nuisance values, it has to really litigate them. And it faces
16 a risk of going to a jury in a very bad environment. And this
17 relates directly to what you heard from Mr. Swett. The
18 environment is -- those other defendants are not in the
19 courtroom. Those other --

20 Now, Mr. Swett says, oh, well, they could litigate
21 the empty chair, they could point to those defendants. But
22 there was -- there were two key things they could not do over
23 the past decade that going forward, were they still in the tort
24 system, they could do. Number one, they couldn't say look,
25 Owens Corning, Armstrong, they've paid hundreds of thousands of

1 dollars to this claimant. This payment has already collected a
2 million dollars from the other claimants. You should consider
3 that in deciding whether GM is liable for any additional
4 amount. They couldn't say that because those claimants were in
5 the middle of a bankruptcy case, they weren't paying anything,
6 the automatic stay precluded them being joined in a suit.

7 There was another thing GM couldn't say. GM couldn't
8 say look, look at their complaint, it alleges that they were
9 exposed to Owens Corning K low product, or they were exposed to
10 WR Grace's monocoat product. And those products give off much
11 greater exposure levels, vastly greater, perhaps 1,000 times
12 great than GM's product. They allege they were exposed to that
13 product. GM's contribution to that, the argument would be, is
14 de minimis. That's an argument they can't make because those
15 defendants were in bankruptcy, because they're in bankruptcy
16 the plaintiffs weren't filing suits against them, and they
17 weren't making -- they weren't forced to make exposure
18 allegations against those other defendants. So they were able
19 to say GM is my only source, or GM and Ford were my only source
20 of exposure.

21 Now, the second central question for Your Honor is
22 has this environment changed now? Or even though this was the
23 reason will it continue indefinitely out into the future? And
24 here's where the discovery comes into play. We say yes, it has
25 changed because the Owens Corning, the Armstrongs of this world

1 they were absent from the tort system over the past decade,
2 they're now back. They've confirmed Section 524(g) trusts.
3 Those trusts are paying very large sums. And while Mr. Swett
4 tried to minimize it by saying pennies on the dollar, if you
5 aggregate all the funding of all the trusts, put it altogether,
6 it totals somewhere between thirty billion dollars and sixty
7 billion dollars, which, on average, if you assume 30,000 meso
8 claimants from now to when asbestos stops causing meso, that's
9 the round estimate, that translates into a million dollars,
10 perhaps more per meso claimant from the trusts. That's a
11 situation comparable to the situation that existed back into
12 the '90s. That is going forward it's reasonable to expect
13 claimants against GM will be filing claims against those other
14 trusts. They'll be collecting in the aggregate something like
15 a million dollars from the trusts. And in order to recover
16 those monies they'll be making allegations exactly like the
17 allegations they were making in their complaints back in the
18 1990s. And that is what GM will be able to point to, it's
19 much, much better than litigating the empty chair when the
20 empty chair isn't making claimants and the claimant to the
21 plaintiff isn't making exposure allegations as to the absent
22 defendant.

23 Now, what discovery -- why do we need discovery in
24 order to prove this point? Mr. Swett said oh, they seem to
25 know about the aggregate numbers already, so do they really

1 need discovery? He mentioned perhaps the single most
2 significant example of why you need discovery. He said these
3 are trusts that are paying pennies on the dollar. Your Honor,
4 we believe that's absolutely not true. But we can't ask Your
5 Honor to take it on our say so. So the principal reason we
6 need this discovery is we want to find out the facts, not what
7 amounts are the trusts funded with overall, but what have they
8 been paying to the claimants who've filed claims against GM.
9 As to each GM claimant what's the aggregate that he or she has
10 received from all the trusts. And in addition, what are the
11 exposure allegations that those claimants are making against
12 the trusts. How do they compare to what was being done back
13 into the '90s? Are we right when we say the environment, the
14 conditions of the 1990s will essentially be the conditions
15 going forward, and, therefore, when Your Honor extrapolates
16 from this chart you will conclude, we hope, that it's
17 appropriate to lay our pencil across the 1990's values and
18 extrapolate them into the future.

19 That, Your Honor, is why we submit that this is
20 relevant. And if Your Honor likes, I'm happy to turn to Mr.
21 Swett's suggestion about why not strip away all the detail,
22 which is something that we'd be amenable to providing there's a
23 way to make it work, which I'm, frankly, a little skeptical
24 about.

25 Here's the problem. We need to match -- every

1 claimant on the GM database, we need to match that person,
2 let's call him Mr. X, we need to find Mr. X's claims and data
3 as to each trust. And so for every trust we have to make sure
4 it's the same Mr. X. And then we have to make sure it's the
5 same Mr. X as to not just the GM claims database, but also the
6 other discovery that GM and New GM are going to be providing to
7 us pursuant to our recently resolved Rule 2004. Namely,
8 they're providing to us as to a subset of claimants
9 interrogatory responses, deposition transcripts. We need those
10 in order to compare --

11 THE COURT: They being Old and New GM?

12 MR. BENTLEY: Correct. We need those in order to
13 compare the exposure allegations that each claimant was making
14 to the trusts to the exposure allegations -- this is among
15 other things, to the exposure allegations that each claimant
16 was making to GM, had made to GM at the time it reached a
17 settlement with GM. Because they're going to say aha, this
18 claimant settled with GM, GM -- this claimant received X
19 dollars from the trusts, GM must have known of the dollars and
20 of the exposure allegations that this claimant make, so we ask
21 give us the interrogatory responses from which we can see did
22 this claimant, in fact, disclose to GM, in fact, the payments
23 that it received and the exposure allegations it had made
24 because there's a lot of evidence out there, as was mentioned
25 in the article by the insurance defense lawyer, that there's

1 often very incomplete disclosure. And there's been a number of
2 court decisions to that effect.

3 So providing that we can make all these matches then
4 we're okay with stripping away the names, but I -- what I'm
5 struggling with is I don't see how you can make the matches
6 without using the name and the other identifying data that you
7 have.

8 And in terms of the risk that's involved, Mr. Swett's
9 concern that Charlie Bates, our expert, is going to somehow
10 disclose this data. Mr. Bates' interest, our interest in this
11 is in this data as an aggregate matter. We have no interest,
12 he has no interest in what was the resolution of Mr. Smith's,
13 Mrs. Smith's claim against GM, it's the aggregate data. It's
14 being able to tell the story that I just told to Your Honor.
15 In the aggregate here's what was happening. So we have no
16 interest in the names and there's absolutely no reason to
17 suspect anybody would violate a confidentiality order. We just
18 may need the names in order to make the matches that are going
19 to be uses.

20 THE COURT: The allegation that I heard, Mr. Bentley,
21 was that somebody in -- I don't know if it's the same guy or
22 not, is going to be testifying as an expert, not just in this
23 case, but in other cases, presumably with the purpose or effect
24 of prejudicing the individual litigants in the plaintiff
25 community. And that expressly or impliedly it wouldn't be

1 enough for me to say that he couldn't give the information to
2 the individual defendant's tort lawyers, who are defending the
3 one-on-one's in asbestos litigation on behalf of GM if it ever
4 got to that point.

5 I don't know if you think I heard him rightly or
6 wrongly, but please answer whether you -- I did, and whether
7 that's something I need to pay attention to.

8 MR. BENTLEY: Mr. Swett will correct me if I'm wrong,
9 but I think Your Honor misheard him or he misspoke. That is,
10 there's absolutely no circumstance that I'm aware of in which
11 Mr. Bates, our expert, would ever be testifying with respect to
12 an individual claimant. Mr. Bates, he's a statistician, his
13 job is to look at aggregate claims of populations.

14 THE COURT: Okay. So it may be that what Mr. Swett
15 was talking about, and I guess Mr. Swett's the best evidence of
16 what he was talking about, would be in other estimation
17 proceedings and other asbestos bankruptcies, or did I
18 misunderstand in total?

19 Mr. Swett, did you -- Mr. Bentley, do you mind
20 yielding to Mr. Swett to clarify?

21 MR. BENTLEY: Not at all, Your Honor.

22 MR. SWETT: Your Honor, I was making a more intensely
23 practical point. This kind of information in the seeing of
24 these hard fought tort suits and resulting bankruptcies is very
25 difficult to protect reliably if the individual data is

1 produced to a hostile party. And a hostile expert who is --

2 THE COURT: Disclosed from whom to whom?

3 MR. SWETT: Disclosed from those who receive it to
4 those who have an interest in using it in another context.

5 THE COURT: That's a pretty broad answer.

6 MR. SWETT: It is and I'm not --

7 THE COURT: I'm looking for more in the way of
8 specifics.

9 MR. SWETT: I'm not accusing anyone in advance, I am
10 simply saying that there is a way to protect it and to make
11 sure that doesn't happen, and that would be a salutary thing.
12 But it is entirely possible to imagine a scenario in which Mr.
13 Bates' -- Dr. Bates' office inadvertently provides -- it
14 creates these funds of data. It's computerized, it's easy to
15 transfer, it's hard to trace. That there is no effective
16 protection against that kind of leakage once the payment
17 information is linked to the individual identity. And here
18 we're going to have partial Social Security numbers that are
19 going to be used if they're permitted to make this matching
20 exercise. And when it comes time for -- when Mr. Bentley has
21 concluded I do have a couple of responses to make.

22 THE COURT: This isn't like the formula for Coke or
23 the nuclear launch codes, I mean I can see why you don't want
24 it to get into the wrong hands, but I still see a difference in
25 degree.

1 MR. SWETT: Well, in Chemtura, Judge, you had 375
2 claimants. You've got 7,400 claimants that the UCC is
3 enquiring about here. In Chemtura you had one or two other
4 sources. Here you've got six trusts, two claims processing
5 facilities, and I think a seventh trust, Manville, with its own
6 claims processing facility. There are lots of players, there
7 are lots of disputes out there involving other debtors who
8 would like to propound similar ideas, who will be eager to get
9 their hands on that data. I have the pleasure of being the
10 committee counsel for the asbestos constituency in the Garlock
11 case, just now, we're they're proposing a whole course of
12 dealing in the bankruptcy program that's key to Mr. Bates'
13 views. It's very sensitive information from the standpoint of
14 maintaining the balance between the plaintiffs and the
15 defendants in the tort system, which is the key to properly
16 valuing their claims for bankruptcy purposes and which is the
17 key to fairness in the tort outcomes too.

18 THE COURT: All right, time out. You've answered my
19 question, this wasn't intended as a surreply opportunity. I
20 want you to yield back to Mr. Bentley, please.

21 MR. BENTLEY: Two quick responses, Your Honor.

22 First, Your Honor mentioned the Coke formula. And as
23 I think Your Honor's probably well aware, even the Coke formula
24 was required to be produced in the litigation when it was
25 relevant. The court dealt with that very high degrees of

1 sensitivity through a confidentiality order. And that can
2 certainly be done here.

3 And, in fact, the confi that we have already proposed
4 provides that all this information will be destroyed or
5 returned at the end of this litigation. Dr. Bates is not going
6 to use it in any other litigation. And the way our courts work
7 is they take people at their word when they commit. And he's a
8 serious professional, with an outstanding reputation. And I
9 would submit that that is sufficient protection.

10 THE COURT: Okay.

11 MR. BENTLEY: Moving on, Your Honor, let me turn to
12 the arguments that Mr. Juris made. And my interpretation of
13 his arguments, Your Honor, was that his principal argument is
14 we should look to the plaintiffs. That rather than going to
15 the centralized database as maintained by the two claim
16 facilities, we should go to the claimants. Well, we took
17 advantage of the breaks, the breaks during this proceeding to
18 check with the Bates White firm, our experts, as to how
19 feasible would that be. And here's the information we got
20 back.

21 That in order to reach ninety percent of the GM
22 claimant population we would have to go to almost sixty, 6-0,
23 law firms. In order to reach ninety-five percent of the
24 population we'd have to go to more than a hundred firms. And
25 we don't even know how many firms it would be to get all the

1 way to 100 percent but it would clearly be a lot larger number
2 than that. So that simply is a recipe, in our view, for
3 multiplying the burden it's not a solution. Here we have claim
4 facilities that are in the business of crunching this data in
5 the most efficient way possible.

6 And on that score, Your Honor, with respect to burden
7 we learned one other very pertinent fact from our expert firm
8 during the breaks. And that is as Your Honor knows the
9 Manville Trust is in the business of supplying this data to be
10 people who've requested. Although, the Manville Trust reserves
11 the right to supply it to those who it chooses, and decline to
12 supply it to others.

13 It used to be that they regularly supplied data to
14 the Bates White firm. And, in fact, the Bates White firm tells
15 us that it was routine, it was regular, that they would provide
16 very substantial amounts of data, more than 100 data fields,
17 culled from thousands of documents, thousands of records. They
18 would compile all this in a matter of a few days and turn it
19 over for a fee of merely 10,000 dollars.

20 Now, they're choosing not to do that now. But while
21 they may prefer not to give it to the Bates White firm for
22 reasons we can all guess at, they are continuing to provide
23 these sorts of services to other parties who may be more to
24 their liking.

25 For example, the firm ARPC, they're the firm that's

1 been retained in this proceeding by the FCR, the future
2 claimants' representative, to be their estimation estimate. So
3 they're in this proceeding, a plaintiff's side estimation
4 expert. They regularly make these sorts of requests to the
5 Manville Trust and are giving this sort of data. No sweat. So
6 we think that Your Honor can con --

7 THE COURT: Do you know what data was provided to the
8 other side?

9 MR. BENTLEY: I'm sorry, to the ARPC firm?

10 THE COURT: The specifics of the data that was
11 provided to the other side? I assume that at some point you're
12 going to be litigating against the creditors' committee, or the
13 asbestos creditors' committee for the prepetition claims and
14 the future claims rep for the future demands. Do I have a
15 situation here where you're informed that there was one-sided
16 licensing here or one-sided disclosure?

17 MR. BENTLEY: No, Your Honor has taken it one step
18 beyond what I was meaning to say. That is we don't have any
19 basis to believe that in this case the Manville Trust has
20 turned over data to ARPC, or to Dr. Peterson, who is Mr.
21 Swett's expert. A big note that --

22 THE COURT: Then what was -- what were you referring
23 to when you said that they gave it -- gave some kind of data to
24 somebody associated with the claims rep, the future claims rep?

25 MR. BENTLEY: The ARPC firm, like the Bates White

1 firm in the past has had occasion to request this data in
2 connection with a variety of matters; estimations in other
3 cases or other projects they may be working off. I can't
4 identify the projects, but I can represent --

5 THE COURT: So you're saying in non-GM litigation
6 their expert was provided this info, but not in this case.

7 MR. BENTLEY: That's correct, Your Honor. And in the
8 past Bates White on a regular basis was provided this sort of
9 information within days for a 10,000 dollar fee. And my point
10 is not so much to argue -- well, it's certainly not to suggest
11 that it's happening here in the GM case, it's simply to make
12 the point that when they want to make it easy they make it
13 easy. And I think Your Honor can give that a certain amount of
14 weight in considering the burden that you're hearing about
15 here. We didn't hear a huge amount, we heard a lot of
16 protestations about burden, but we didn't hear a lot of
17 specifics. We just heard make somebody else bear the burden.

18 So, Your Honor, that's all I have on the substance.
19 But if I may, I have a practical suggestion as to where we
20 might go from here.

21 THE COURT: Go on.

22 MR. BENTLEY: We recognize there's some work to be
23 done here among the lawyers. Your Honor raised a very
24 important point about the confidentiality agreement to make
25 sure there's an absolutely secure screen in place with respect

1 to New GM, not to mention the issues that have been raised as
2 to making certain that the screen as to Dr. Bates is 100
3 percent secure. We're happy to work on that, and we're happy
4 to work on that with counsel for all the other parties.

5 We're also happy to work with those other parties on
6 the issues of burden. For example, we're prepared to explore
7 with them whether this masking approach, this strip away the
8 individual names approach could work. If that works we're
9 happy to do it.

10 THE COURT: Do you mean, as we did in Chemtura or
11 something different? And as Mr. Swett proposed or something
12 different.

13 MR. BENTLEY: I'm referring to what Mr. Swett
14 provided. And I do have hesitations, I do have concerns about
15 whether that would work here as I described. The issue is if
16 you stripped away the name could you really make all the
17 matches with the various different sources of data here,
18 including GM interrogatory responses and so forth that you
19 would need to. If that problem is solvable then we have no
20 problem with stripping away the names. We don't -- this is not
21 about individual claimant names, so we're happy to explore
22 that.

23 From a timing perspective, here's what I would
24 suggest, subject, of course, to Your Honor's preferences. We
25 are concerned about moving this process forward. You've heard

1 from several parties and we share the view that we want the
2 estimation process to move forward promptly. And we also want
3 the settlement process to move forward promptly. For those
4 reasons, it's important that Your Honor enter an order that
5 enables us to issue subpoenas, and hopefully to do it now
6 particularly given that it's August and we understand Your
7 Honor may be away a fair amount of the rest of the month. What
8 we would propose in order to mesh this need to move forward
9 with the concern about -- with the need of the lawyers to work
10 amongst themselves and hash out some of these issues, is what
11 we would suggest is we prepare and submit an order to the Court
12 this afternoon, which we would circulate first to the other
13 parties, that the order would authorize the issuance of
14 subpoenas to the claims facilities now. It would provide that
15 the producing parties would reserve their rights to come back
16 to this Court, this Court, not another court per your colloquy
17 with Mr. Juris, in the event specific issues are not able to be
18 resolved through the discussions that we'll be having with them
19 over the next few weeks.

20 And entering an order of that sort would permit the
21 process to begin. It would permit the clock to start ticking
22 as far as -- forcing them to resolve any issues and to produce
23 documents. And so that's what we would propose. I would
24 propose one other wrinkle in the order, and that is we intend
25 to attach to the subpoenas a list of claimants with Social

1 Security data provided by the debtors or New GM attached to it.
2 We're doing that because that will be helpful to them in making
3 sure they have the right claimants, in making the match that
4 they need to make.

5 That's obviously confidential, the list of claimant
6 names and their Social Security data. But the way, it's just
7 the last four digits, not the whole Social. And so we would
8 suggest that if Your Honor's inclined to enter an order now
9 that the order provide, among other things, that the
10 confidentiality of this list and the annexed data will be
11 protected until the parties are able to work out a fully
12 negotiated confidentiality agreement in the meantime that will
13 be entitled to attach this list and the parties will keep it
14 confidential.

15 THE COURT: Suppose, Mr. Bentley, that I'm inclined
16 to give you a -- most or even more of what you're asking for,
17 but I think Mr. Swett's idea is preferable. And that is it
18 were practical I might prefer it. In other words, to give the
19 various trusts and the like the key to the jail if they could
20 provide an implementation of the Swett idea, if I can call it
21 that, in sufficiently fulsome way that it would meet your
22 needs. How would I best implement a ruling that says that what
23 you're asking for is basically okay, but Swett's idea is
24 better?

25 MR. BENTLEY: I think Your Honor has essentially just

1 done it. That is, if Your Honor were to enter an order along
2 the lines I was suggesting we are now very clearly on notice
3 that Your Honor would like us to do our darndest to make the
4 Swett idea work. And that would be motivating, Your Honor.

5 THE COURT: One thing you didn't address was a point
6 that Mr. Juris made about a requirement in many of the trust
7 agreements that provides in substance for notice to individual
8 litigants. Do you believe that I have to -- I have to or
9 should, those being two different issues, give notice to
10 individual tort litigants, what would I do if, as I think is
11 nearly a certainty, some number of them raise objections,
12 either because their ox is genuinely gored or because they want
13 to be difficult. And what do I do with the risk that the
14 notice period provide -- has the potential of bringing
15 everything to a halt, on the one hand. But on the other would
16 raise, at least arguable due process issues to the individual
17 litigants?

18 MR. BENTLEY: I think that issue is manageable, Your
19 Honor. Let me address it in a few bites.

20 First, they -- Your Honor doesn't have to order
21 notice, they believe they're required, at least to their
22 practices if not anything more, to give notice. We believe
23 it's very easy for them to give notice. Their claims database
24 can undoubtedly match the various claimants to the various
25 claimants' counsel, presumably with a touch of a button. And

1 they almost certainly have the e-mail addresses for the various
2 counsel and can send out a mass e-mail tomorrow if Your Honor
3 were to enter an order. They could forward the order --

4 THE COURT: So we don't have to do it the old-
5 fashioned way, like we used to of mailed notices, kind of like
6 notice of a class action or anything like that, or of a
7 proposed class action settlement?

8 MR. BENTLEY: I think, Your Honor, I think this is a
9 matter of them complying with their own procedures, nothing
10 more. It's not a matter of compliance with other court's
11 order -- another court's order. I would also say --

12 THE COURT: You're saying, you don't have to use the
13 old-fashioned U.S. Mail anymore?

14 MR. BENTLEY: I think Your Honor is entitled to be
15 practical. And I think these claimants all are represented by
16 counsel. Counsel have e-mail, and we all prefer, as counsel,
17 as Your Honor knows, to get e-mails than hard copy mail. I
18 think we can be practical about this.

19 THE COURT: Continue.

20 MR. BENTLEY: And I think Your Honor can also take
21 advantage of the two-step process that's always involved when
22 the Court signs a 2004 order; that is, if Your Honor were to
23 sign the order today or tomorrow, the next step, as you heard
24 from counsel, is for us to serve subpoenas. And they do have
25 the power, under the rules, to then raise issues as to -- not

1 as to the global issues Your Honor has already ruled on, like
2 relevance, but as to discrete issues of privilege or burden.
3 And Your Honor's order can provide --

4 THE COURT: Well, from the perspective of a tort
5 litigant, one of those who would be getting notice, you're
6 right that the issue of relevance and most of these issues
7 would have gone by the wayside. But the one area where a tort
8 litigant might have a legitimate desire to be heard is saying,
9 hey listen, there's a leak in the protective screen, and my ox
10 is going to get gored because they're going to use the
11 information against me in X, Y and Z ways.

12 Now, that would -- if established, that would be both
13 the area where I would think that a complaint by a tort
14 litigant might be judicially cognizable, and might, if there
15 were something wrong with it, be the kind of thing I'd be
16 interested in.

17 MR. BENTLEY: And I believe the procedure that I'm
18 suggesting would give those tort claimants the ability to be
19 back in court, as Your Honor's order would leave open the
20 possibility of us all being back in court with respect to
21 discrete issues. Now, the broad issues, the global issues --

22 THE COURT: Of course, you realize that you're
23 hostage in terms of delay, to frivolous objections of tort
24 litigants?

25 MR. BENTLEY: I think Your -- I don't know Your

1 Honor's schedule, but if we could --

2 THE COURT: It's bad.

3 MR. BENTLEY: -- I understood that.

4 THE COURT: It's bad in August, and it's bad because
5 I have a contested confirmation hearing in Chemtura and a
6 dactyl estimation hearing in Chemtura for the nonsettling
7 defendants, which is roughly ten percent of the Chemtura
8 universe. And there are limits to which I can give litigants
9 court time, especially if, for certain litigants, Saturdays are
10 not available or people don't like working on Sundays.

11 MR. BENTLEY: I think a saving grace, Your Honor, is
12 that the issues that are likely to arise, I think, would be
13 global issues. We've addressed, today, all the global issues
14 that all of the very good lawyers in this courtroom can think
15 of. Your Honor, a moment ago, envisioned a possible claimant-
16 specific issue. But frankly, I have trouble believing there's
17 going to be many of those.

18 THE COURT: The only claimant-specific issue that I
19 can think of, is we don't have enough protection of that
20 information being used against me. But I'm not one of the very
21 good lawyers in this courtroom. And you guys have thought
22 about it more than I have.

23 MR. BENTLEY: But, Your Honor, is that a global issue
24 as opposed to a claimant-specific issue?

25 THE COURT: Well, it depends on the nature of the

1 alleged violation; if it's common to a particular litigant --
2 unique to a particular litigant or if it's one that everybody
3 suffers from. I'm not sure if one litigant has standing to
4 complain about it insofar as others are concerned. But I'm not
5 going to decide issues that aren't before me now.

6 MR. BENTLEY: Yes, I understand. I think the
7 practicality, Your Honor, is that if we go this route, we would
8 need to expect that there might be a follow-up hearing in this
9 Court that would need to be set, perhaps sometime in September.

10 THE COURT: Um-hum. All right. I've interrupted you
11 a zillion times, Mr. Bentley. You can finish up.

12 MR. BENTLEY: I think I've made the points I'd like
13 to make, unless Your Honor has questions.

14 THE COURT: All right. Thank you.

15 Mr. Juris, I'll allow any brief comment if it's
16 limited to anything that was said by your opponent, not by Mr.
17 Swett, who I think has to be regarded as your ally. If there's
18 anything limited to what Mr. Bentley said, I'll take brief
19 surreply.

20 MR. JURIS: Thank you, Your Honor. Should I --

21 THE COURT: Yes.

22 MR. JURIS: -- take the podium?

23 THE COURT: Yes.

24 MR. JURIS: I'll keep it brief, Your Honor. I know
25 we've got a while. A couple of points, just more on mechanics

1 more than anything else, because I think the issues have been
2 fleshed out.

3 There is a mechanical issue that just relates to
4 timing I just want to be clear with the Court about, which is,
5 depending on whatever regime ultimately is decided upon here,
6 whether it's disaggregated data without names or with names,
7 there's an open question in my mind about whether or not, as
8 I'm told from our technical folks, with just the last four
9 digits of the Social Security numbers, whether we would be able
10 to quickly and without a lot of manual review, match up GM
11 litigants against the trusts, as quickly -- in the way that I
12 think is contemplated. I think that gets much, much better,
13 the more detailed information we --

14 THE COURT: If they gave you all nine numbers in the
15 Social Security number and you agreed not to give it in Macy's
16 window, would that issue go away?

17 MR. JURIS: I think that issue, but only that issue.
18 And then there's the other issue which I'm frankly more
19 concerned about. It's what Your Honor just touched on a moment
20 ago, which is this. As we read the TDPs which courts have
21 approved and we're required to follow, when a subpoena is
22 issued, we're required to tell the claimants that their
23 information has been subpoenaed. We don't have a choice in
24 that matter. And if we get a subpoena that asks for this
25 stuff, someone is going to have to reach out to these people.

1 And it's not as easy -- for some it may be as easy as
2 sending out a mass e-mail. But life is not that easy. It
3 strikes me that the debtor here knows exactly who has made
4 claims against GM. This is a bankruptcy case. We're not
5 equipped in the way that Your Honor and the lawyers who deal
6 with the bankruptcy on a day-in day-out basis -- we're just not
7 equipped to deal with the claims process in quite the same way
8 that, as I understand, in Chemtura or other cases, there's
9 constant discussion about claims being sent out.

10 It strikes me that at the very least, whatever remedy
11 is imposed here to try to do justice and try to deal with the
12 equities and the balance of burdens here, that it shouldn't
13 fall, if we can make it so it doesn't fall, on the trusts to
14 have to deal with the notices and the inevitable responses that
15 are going to come. Because I can assure Your Honor that what
16 will happen is, we will send out notices. We're going to have
17 to -- for some it will be easy, for some it won't be so easy.
18 There may be folks who were once represented, who are no longer
19 represented. And what are we going to do with those folks?

20 We know that in the bankruptcy case, these are all
21 claimants, these are all creditors. And the parties to this
22 case deal with them as creditors of record. GM knows who they
23 are. They're chomping at the bit to send us a list. So that
24 if whatever the ultimate resolution is here, and I think this
25 would have to apply whether it's disaggregated or whether it's

1 claimant-specific, under the terms of the TDPs, the parties-in-
2 interest who are claimants whose information was supplied to
3 the trust under the TDPs and under the electronic file
4 agreements and under the court orders that required notice to
5 be given and the material to be treated as confidential, I
6 think would give the claimant who is not here today, every
7 right to come in and say, you know what, these lawyers are
8 great, but when I submitted my information --

9 THE COURT: How are you contending that you can give
10 notice to somebody -- you have information as to somebody
11 having filed a claim. They must have given you some, either
12 e-mail address or snail mail address or both. So whatever you
13 got, you just send it back to them with whatever information
14 they gave you. Are you telling me that doesn't comply with
15 your notice obligation?

16 MR. JURIS: Well, it says that we're supposed to give
17 notice to the counsel for the holder of the subpoena. And I
18 guess my point is this --

19 THE COURT: Well, do you think there are that many
20 lawyers in the country who don't have e-mail addresses?

21 MR. JURIS: I think if past practice is any guide,
22 when inquiry has been made here about just how to respond to
23 these kinds of requests, it's not as easy. And what I'm
24 suggesting is that there's a solution here that is made
25 available because the individuals who would be the GM claimants

1 are claimants in this case. They're notice parties in this
2 case. They've presumably filed proofs of claim. And the
3 debtor knows who they are and Mr. Bentley knows who they are.
4 They want -- they know who they are, because they want to give
5 us a list of them. So I guess what I'm suggesting is, that
6 doesn't solve our burden issue.

7 THE COURT: You think that any judge who heard -- me
8 or Judy Fitzgerald or Burt Lifland or whoever else has -- do
9 you think if any of us heard that the debtors -- that somebody
10 had tried to send notice to the e-mail address or snail mail
11 address that had been provided by a claimant, would then find
12 that responding to the notice requirement hadn't been
13 satisfied?

14 MR. JURIS: Your Honor, I guess what I'm suggesting
15 is, we can -- you're correct in that we can only do what we can
16 do. And I think, in fairness, our argument would be that we,
17 in fact, had only done what we could do. What I'm suggesting
18 is, the parties to this case may be able to do us one better,
19 and it may be easier. And then our staff doesn't have to be
20 sending these things out. And it's just that simple.

21 Is that perfect? No. Are there costs on both sides
22 of the equation? Yes. Could we do it and satisfy ourselves
23 that we were doing a good a job as anyone in our situation
24 could do? Sure. And we would so say to Judge Fitzgerald or
25 whatever judge. I guess what I'm saying is, given the balance

1 here, there's a ready way in which anyone who would have GM
2 claims, Mesothelioma claims, would be able to get notice from
3 the committee or from the debtor, in a way that would eliminate
4 the middle-man, and eliminate all these issues altogether. It
5 wouldn't eliminate the burden, but it would make it easier for
6 the trusts and their staff.

7 THE COURT: Okay.

8 MR. JURIS: Thank you, Your Honor.

9 THE COURT: Thank you. Mr. Karotkin, before we shut
10 it down, do you want to be heard?

11 Oh, wait, Mr. Swett, you're twitching. Do you want
12 to get up? Same limits on what I imposed on Mr. Juris.

13 MR. SWETT: Yes, sir. I think what you should do is
14 send the parties off, having heard your remarks today, to see
15 what they can work out. And my focus will be on the
16 protections and the scope and trying to find practical means to
17 square that circle. And past experience suggests that there
18 are means preferable to just allowing the information to come
19 forth in the fashion that the UCC has requested.

20 I do note, Judge, by way of rebuttal, that Mr.
21 Bentley did not have an answer to the fact that the TDPs tell
22 you what the average values the trust will pay in the future
23 are. And again, that suggests to me that by pushing more on
24 the theory of how they're trying to justify it, you will come,
25 in the dialogue among the parties, to better scope for what

1 information needs to come forth to satisfy their means -- their
2 needs.

3 THE COURT: Well, is this a discovery objection or is
4 this an objection that you're going to raise at the estimation
5 hearing if you can't settle, where you're going to say that
6 their predictions of the future are subject to greater question
7 on my part, because the underlying data does not necessarily
8 support the inference they're going to be asking me to draw?

9 MR. SWETT: Well, of course, if they go to the level
10 of individual claims, we'll have it out at that level. And
11 that will be a relevancy issue and a debate about probativeness
12 and does it all amount up to anything at the time of the
13 contested evidentiary hearing. But right now, it's a discovery
14 matter.

15 I notice, for instance, that they've only asked for
16 650 claim files from the most obvious source, General Motors.
17 They want data on 7,400 claimants from the trusts. There's an
18 imbalance there. If they thought harder about what their real
19 needs are, that imbalance could be redressed and something more
20 sensible could happen.

21 So I think that all counsel have had their ears wide
22 open during this hearing. I think we all have a pretty good
23 sense of where you believe this ought to come out. You think
24 they should get information of the kind they are requesting,
25 within limits and with subject to protections, that recognize

1 the nature of the proceeding and the individual rights that are
2 implicated, but that really shouldn't be at stake in the way we
3 structure the estimation hearing. And that -- with that
4 direction from the Court, it would probably be useful to have a
5 meet-and-confer, to see what we could accomplish.

6 And it shouldn't be under the gun of a presumptive
7 order that, in effect, gives the UCC a veto over the proposals.
8 They should be required to work with us in earnest to try and
9 solve this problem. And if it can't be solved, then we come
10 back to you and you tell us what we should do.

11 THE COURT: Mr. Karotkin?

12 MR. KAROTKIN: Thank you, Your Honor. Stephen
13 Karotkin, Weil, Gotshal & Manges, for the debtors. I will be
14 brief.

15 First of all, there was some discussion about all
16 nine Social Security numbers as opposed to the last four. That
17 was something that was agreed upon between the UCC and New GM.
18 There was a fair amount of sensitivity to that issue on the
19 part of New GM. And I am not able to speak for them on whether
20 or not that's an issue for them. But it sounded like a rather
21 important issue to them. I think that to the extent that Your
22 Honor is inclined to grant the relief, I think certainly we
23 could start with the last four digits, and that ought to pretty
24 much eliminate or pick up most of the population of the claims
25 that are being looked for.

1 THE COURT: Well, the comment goes to New GM, I
2 guess, rather than to you, Mr. Karotkin. But the fact is that
3 we bankruptcy judges, more than anybody, are sensitive to the
4 desirability of not revealing the first five numbers. But we
5 also expect our confidentiality orders to be complied with.
6 And if New GM has a problem and it saves everybody a fortune to
7 do it with nine, and if it is nutty not to, I guess I can --
8 who's their counsel, Honigman?

9 MR. KAROTKIN: Yes, sir. I can certainly arrange
10 with them --

11 THE COURT: They can explain to me why they don't
12 want to comply with an order that I am inclined, tentatively,
13 to grant.

14 MR. KAROTKIN: -- I would imagine they would comply,
15 Your Honor.

16 THE COURT: Okay.

17 MR. KAROTKIN: I am just saying, I cannot speak to
18 that issue on their behalf.

19 THE COURT: I understand matters of principle, but I
20 also believe in the effectiveness of confidentiality orders.
21 And my main goal in life is to put money into the pockets of
22 creditors and save jobs. And I'm not going to quantify the
23 importance of those two. But I would think that the latter,
24 which New GM benefitted from at one point, is one where they
25 would understand that judges need some concerns as well.

1 Again, I may be talking to the wrong guy.

2 MR. KAROTKIN: I am sure they would recognize that,
3 sir.

4 THE COURT: Okay.

5 MR. KAROTKIN: With respect to the notice issue that
6 Mr. Juris indicated that perhaps the debtors ought to do that.
7 I really don't think that's appropriate. That's a burden that
8 his claims resolution procedure or trust took on for
9 themselves. I don't think it's appropriate to put the debtor
10 in the middle of that exercise. I'm not even sure what the
11 notice ought to say. Again --

12 THE COURT: Well, the notice would probably have to
13 say whatever the individual trust agreements require it to say
14 and to be sent to the people who have told the trust that they
15 want to participate in their trust.

16 MR. KAROTKIN: And I'm sure they're perfectly capable
17 of doing that rather easily.

18 THE COURT: Um-hum.

19 MR. KAROTKIN: As we mentioned in our response, we
20 really have, as the debtors, one keen interest in this, and
21 that is time and expense, as Your Honor recognized and as Mr.
22 Swett alluded to on a number of occasions. And he did say that
23 at one point he was forcefully reminded of the fact that from
24 the debtors' perspective we hoped that we wouldn't be engaged
25 in this discovery free-for-all, and that since three or four

1 months have elapsed since these experts were retained, and this
2 is first coming up now, that we were hopeful, Your Honor, that
3 the experts had sufficient data with the information provided
4 by New GM -- that information was supplemented -- that we could
5 get people in a room together and sit down and have a
6 meaningful negotiation before, again, this devolved into --
7 everyone's talking about an estimation proceeding already.
8 Everyone is gearing up for an estimation proceeding already.

9 THE COURT: And if you could have your Christmas wish
10 list satisfied, you would love for these guys to get the
11 information they need to make a deal and then make a deal, and
12 stop this water torture before it goes on into January or
13 February or later.

14 MR. KAROTKIN: And I think you would like it better
15 than I would like it.

16 THE COURT: Yes, but I get paid a lot of money to do
17 what I do. Probably almost as much as you pay some of your
18 paras. Or at least --

19 MR. KAROTKIN: I'm not going to take that one on --

20 THE COURT: -- your first-year associates.

21 MR. KAROTKIN: -- Your Honor, all I'm suggesting is,
22 I think -- unfortunately, I think we're heading to an
23 estimation proceeding. I would just hope that the parties
24 could get their experts going, come up with the numbers -- I
25 think I could probably predict the number at this point that

1 they're going to come into a room with -- and that we sit down
2 like mature adults and try to resolve this.

3 In the context, Your Honor, of thirty-five or forty-
4 five billion dollars of overall unsecured claims here, a
5 relative swing in the asbestos liability, based on the
6 distribution or the percentage distribution in these cases, may
7 not be that material where mature adults couldn't sit in a room
8 with their experts and come up with a solution --

9 THE COURT: I understand. And --

10 MR. KAROTKIN: -- that would save a lot of time and
11 expense.

12 THE COURT: -- are you also about to tell me that you
13 would assume, as I do, that both the general unsecured creditor
14 community and the asbestos unsecured creditor community would
15 prefer to get their money sooner rather than later?

16 MR. KAROTKIN: I was just --

17 THE COURT: Or their stock or whatever they're going
18 to get?

19 MR. KAROTKIN: -- I was -- you took the words out of
20 my mouth, sir.

21 THE COURT: Yes, I understand.

22 MR. KAROTKIN: So, again, we're concerned about cost
23 and time. We are poised to, as you heard on Friday, I believe,
24 to file a plan. And again, we share the interests that Your
25 Honor just alluded to, and we hope that the creditors share

1 that interest in getting distributions out as quickly as
2 possible rather than engaging in months of an estimation
3 hearing. Thank you.

4 THE COURT: All right. Here's what we're going to
5 do, folks. It's now a quarter to two. I want you all to take
6 a lunch hour and be back here in an hour. Hopefully, I'll be
7 able to give you a ruling then. So be back here at 2:45.
8 We're in recess.

9 (Recess from 1:49 p.m. to 3:25 p.m.)

10 THE CLERK: All rise.

11 THE COURT: Have seats, everybody. I apologize for
12 keeping you all waiting.

13 Before I issue my ruling, Ms. Stubbs, in your letter
14 of August 6, you wrote at the end, "We write to advise the
15 Court that the Manville Trust and CRMC have learned that one of
16 the constituencies does not consent to the licensing and
17 distribution of Manville Trust data to Bates White." Who is
18 that?

19 MS. STUBBS: The selected counsel for --

20 THE COURT: Move a microphone closer to you.

21 MS. STUBBS: -- selected counsel for certain
22 beneficiaries.

23 THE COURT: Be more specific.

24 MS. STUBBS: Are you asking which of the three firms
25 represent -- I don't know which of the three firms did not

1 consent.

2 THE COURT: Selected counsel for certain
3 beneficiaries?

4 MS. STUBBS: Correct. There are three law firms that
5 represent the beneficiary group to the Manville Trust.

6 THE COURT: The law firms that represent the asbestos
7 plaintiffs?

8 MS. STUBBS: The claimants to the Manville Trust,
9 correct. They're --

10 THE COURT: Who, if they didn't make a claim to the
11 trust would be plaintiffs against somebody?

12 MS. STUBBS: Correct. I believe that's correct.

13 THE COURT: And you don't know who they are?

14 MS. STUBBS: I know who the three law firms are. I
15 don't know which of those --

16 THE COURT: Tell me who the three law firms are.

17 MS. STUBBS: I'll have to get that from my notes.

18 THE COURT: Okay.

19 (Pause)

20 MS. STUBBS: Motley Rice in Mount Pleasant, South
21 Carolina; Baron and Budd, located in Dallas; and Rose, Klein &
22 Marias in Los Angeles.

23 THE COURT: All right.

24 All right. Ladies and gentlemen, I'm granting the
25 creditors' committee's motion as modified by the creditors'

1 committee in its reply, and as I'm going to impose conditions
2 and qualifications as to the grant of the authority here, the
3 most significant of which will be: (1) notice and opportunity
4 for individual tort litigants to be heard; and (2) a possible
5 means for the trusts to be relieved of the duty to comply if
6 they can offer information consistent with the Swett proposal
7 and what I approved in Chemtura; and the trust accepts the
8 offer to provide the necessary information in that fashion, or,
9 as after a negotiation, the parties might otherwise agree; but
10 which acceptance can't unreasonably be withheld, and where I'll
11 rule on any refusal if need be. My bases for the exercise of
12 my discretion and, where applicable, conclusions of law,
13 follow.

14 First, I'm fully satisfied that the information that
15 the creditors' committee seeks is relevant, or at least much
16 more than sufficiently relevant to permit discovery with
17 respect to it; though I'll give anyone who might wish to object
18 to ultimate admissibility at trial, a reservation of rights, to
19 the extent that would even be necessary, if and when any of the
20 produced material might be offered at trial.

21 I'm also satisfied that the request here is an
22 appropriate use of Bankruptcy Rule 2004. We judges approve use
23 of 2004 in advance of a likely contested matter or adversary
24 proceeding all the time. I did it in this case, in fact, when
25 I authorized it for the asbestos committee. And I've done it

1 repeatedly when creditors' committees investigate potential
2 claims against secured lenders, that anyone with an ounce of
3 knowledge as to Chapter 11 knows, will be followed by further
4 avoidance actions, lender liability actions, aiding and
5 abetting litigation or some combination of those or some
6 alternative theory upon which they might later sue.

7 The real issues on this motion as culled from the
8 much longer laundry list of objections filed by the trust, most
9 of which, as my questions revealed, I regard as silly, are the
10 extent to which the request imposes an unreasonable burden and
11 the extent to which disclosure of the information might
12 prejudice individual tort litigants in the future, one-on-one
13 litigation down the road, or otherwise, though I regard any
14 otherwise contingencies as unlikely.

15 As to those two important issues, first I'm not
16 persuaded that there's a material burden. Except for the
17 Celotex data, all of the relevant data is on computer and can
18 be extracted in a variety of ways that are relatively simple
19 and inexpensive to provide. Certainly the fact that the
20 Manville Trust can provide similar information by license, for
21 a fee of 10,000 dollars, and could have done so here, were it
22 not for the objections to which I was just informed, is
23 instructive.

24 I've also considered and rejected the contention that
25 disclosure is barred by Rule 408. First, that's not a rule of

1 privilege, it's a rule governing admissibility at trial.
2 Second, we're talking about the results of settlement
3 negotiations, not what the parties admit to each other or
4 otherwise say in settlement negotiations. Third, Rule 408, by
5 its express terms, excludes statements offered for purposes
6 other than to prove liability for, inability of, or the amount
7 of a claim, or for impeachment. Whatever their applicability
8 might be in one-on-one litigation, they have no relevance here.

9 Then, neither the filings with the trusts by tort
10 claimants nor the amounts of the settlements are privileged.
11 By definition, they're not. And we all agree on that. So
12 there's no need for expensive attorney review. And the
13 suggestion that I should require payment for attorneys' fees
14 associated with the trust production -- I'm going to use a
15 softer word than I have in my notes -- is extraordinarily
16 lacking in merit, especially when we consider the important
17 information that could have been provided under the Manville
18 Trust longstanding license procedures, if only those three law
19 firms for tort litigants, whose tactical interests would be
20 contrary to the creditors' committee, hadn't objected.

21 With that said, I wonder whether providing the
22 information in the manner Mr. Swett proposed, akin to the way
23 we did it in Chemtura, might not be materially more burdensome,
24 and might better protect individual tort litigants'
25 confidentiality. I'm intrigued by that idea, and might even

1 prefer it, but not to the degree that I deny the creditors'
2 committee's motion or deny the creditors' committee the option
3 to get this information as requested, if the trust's proposal
4 were to turn out, in the eyes of a reasonable observer -- first
5 the creditors' committee, and then if there were disagreement,
6 me -- turned out to be an unacceptable substitute for
7 disclosure of the matter that I've authorized to be disclosed
8 now.

9 Putting it another way, I think the Swett idea is
10 preferable. But if we can't make it work, and if the
11 creditors' committee rejects it and I later conclude that the
12 creditors' committee's refusal to accept it was reasonable
13 under the circumstances, then the creditors' committee is going
14 to have that discovery the way I've now authorized it to
15 proceed.

16 The second issue, and ultimately the most important,
17 in my view, is protection of the legitimate needs and concerns
18 of individual tort litigants in one-on-one litigation with New
19 GM or anyone else with whom they might be involved in one-on-
20 one litigation, all as contrasted to the macroeconomic
21 estimation that we have before us here.

22 Here I believe that confidentiality agreements and
23 orders implementing them will do just fine, assuming that
24 they're appropriately drafted. The idea is to make the
25 information available to the experts and anyone such as the

1 creditors' committee and the asbestos committee, who are
2 negotiating the underlying issues, or acting as trial counsel,
3 in the event of an inability to settle, while keeping that
4 information out of the hands of those defending litigation
5 brought by individual asbestos litigants in one-on-one lawsuits
6 or claims processes, or, of course, those on the other side of
7 those litigations as well.

8 While providing information, as Mr. Swett proposes,
9 would perhaps be the best way to protect sensitive information,
10 it's not the only acceptable way. And as I said,
11 confidentiality orders will be satisfactory. I'm not going to
12 presume or assume noncompliance with a confidentiality order.
13 In ten years on the bench, I've never had any such
14 noncompliance.

15 Ladies and gentlemen, I think the cost of compliance
16 with the requested discovery will be relatively modest, since
17 the data is already on computer, and need only be extracted.
18 However, I'll require that the creditors' committee pay for the
19 reasonable out-of-pocket costs of providing the data, not
20 including absorption of overhead or other fixed costs, and not
21 including attorney's fees.

22 I will also say, for the avoidance of doubt, that
23 I've considered and rejected the contentions that the requested
24 discovery in any way requires inappropriate dissemination of
25 proprietary information belonging to DCPF or any of the trusts.

1 We're not talking about disclosure of source code or
2 confidential algorithms, or if I understood the request
3 differently and such was requested, I'll consider further
4 relief with respect to that request. Here, we're talking about
5 data in the databases that the computers will spit out.

6 It's been pointed out to me that several of the
7 trusts' agreements require notice to claimants before
8 information in those claimants' claim files is provided. While
9 I think that the procedures we've put in place and will put
10 into place, would provide claimants with adequate protection of
11 any confidential information, especially as the creditors'
12 committee has narrowed its request, I don't want to step on the
13 toes on my brother and sister bankruptcy judges and either
14 disregard procedures they approved or deny claimants'
15 protections that my colleagues thought were appropriate.

16 Thus, I'm going to direct that notice and opportunity
17 to be heard be provided to individual claimants whose
18 information is to be provided, with a reasonable period -- I'm
19 thinking of two weeks -- after notice to file an objection to
20 me as to disclosure. I won't hear any further objection with
21 respect to any matters I've now ruled upon, nor, of course,
22 with respect to any litigant's normal desire to avoid
23 assistance to his or her adversary. But I will hear any and
24 all objection with respect to whether the confidentiality
25 agreements, orders and other protective mechanisms are

1 adequate, or any other legitimate confidentiality concerns that
2 I may have overlooked, have been satisfactorily protected, or
3 those which I've focused on or otherwise, don't go sufficiently
4 far to provide necessary protection.

5 That notice is to go by e-mail to anyone who provided
6 or whose counsel provided an e-mail address with his or her
7 claim, and by regular First Class Mail to anyone who provided
8 only a mail address and not an e-mail address. Where a lawyer
9 or law firm filed claims on behalf of more than one claimant,
10 and I sense that there may be many of those, a single e-mail to
11 that law firm on behalf of all of that firm's clients will be
12 sufficient. I rule that notice in that fashion will be
13 satisfactory.

14 As I indicated, the Swett proposal is better in a
15 number of respects, if it can be implemented without material
16 prejudice to the creditors' committee. It is better in that
17 compliance is likely to be more focused on the real issues,
18 almost as fast in delivery of data, and likely faster with
19 respect to data analysis, and more protective of individual
20 asbestos litigant confidentiality. But the Swett proposal has
21 not been made by the trusts or endorsed by them, and it might
22 be easier for them to simply provide the requested data under a
23 confidentiality agreement. And I won't make the creditors'
24 committee accept the Swett proposal or any variant of it
25 without appropriate verification.

1 You all are to caucus amongst yourselves to see if
2 you can make the Swett approach work. Initially unacceptable
3 proposals should be responded to by counterproposals rather
4 than by a cessation of negotiations. If a reasonable proposal
5 is made, and the creditors' committee rejects it without good
6 reason, anyone who's made such a proposal can contact me to see
7 if I think the proposal should have been accepted, and should
8 thus be the alternate way by which the creditors' committee
9 will get the necessary information. But for the avoidance of
10 doubt, if you can't agree upon this alternative, the creditors'
11 committee will still have its rights under this ruling.

12 Mechanically, the creditors' committee is to settle
13 an order authorizing the discovery as soon as possible. It
14 will also provide for comment by any and all whose ox would be
15 gored by it, a proposed form of confidentiality agreement,
16 which will be negotiated out until a satisfactory form of it
17 has been finalized. Again, if the initial proposal is
18 unsatisfactory, I don't expect to hear about a unilateral
19 rejection. I expect to have negotiations and counterproposals
20 until a satisfactory form of confidentiality agreement and
21 order have been developed.

22 The order authorizing the 2004s is to provide that
23 subpoenas may be issued two weeks from the date of entry of the
24 order and finalization of the confidentiality order --
25 agreement and/or order -- but the order must go with the

1 confidentiality agreement -- whichever comes later, provided
2 that if a deal to implement a Swett proposal or variant of that
3 is made within those two weeks, it will supersede that
4 authorization that I'm now granting; and that if a deal isn't
5 made but a proposal along the Swett proposal lines has been
6 made with a contention that the creditors' committee
7 unreasonably withheld its assent, service of the subpoenas will
8 be held up until I've ruled on what is and what isn't
9 reasonable, by hearing or conference call.

10 Let me tell you what I also expect. I couldn't have
11 agreed with Mr. Karotkin more when he emphasized the importance
12 of getting these issues resolved promptly. I also believe that
13 to the extent practical, they need to be resolved as
14 inexpensively as the circumstances permit. And as I believe
15 everyone in the room understands and agrees, this controversy
16 over the asbestos claims is a gating issue, impairing all
17 creditors, general unsecured and asbestos creditor alike, from
18 getting their stock and any other distributions under the plan.
19 I expect all parties to be continually sensitive to the need to
20 avoid prejudicing the creditor community by delay in connection
21 with this dispute.

22 All right. Not by way of reargument, are there any
23 issues that I failed to address? Mr. Karotkin?

24 MR. KAROTKIN: Just one point of clarification -- well,
25 two points. Number one, you mentioned the committees in terms

1 of being able to get the information but not the debtor. I
2 assume the debtor --

3 THE COURT: I didn't mean to exclude the debtor.

4 MR. KAROTKIN: -- okay.

5 THE COURT: I had assumed, fairly or unfairly, that
6 the creditors' committee needing it was going to be carrying
7 more of a laboring oar, but I did not mean to exclude the
8 debtor. And anything the creditors' committee gets will be
9 available to the debtor. Except I'm going to need you to be
10 particularly diligent, Mr. Karotkin, in making sure that any
11 data that's provided to you and your colleagues at Weil,
12 doesn't fall into the wrong hands.

13 MR. KAROTKIN: Yes, we will do that, sir. And just
14 one other question. You mentioned the notice that would go to
15 the claimants, the trusts' requirement to give notice, but you
16 didn't mention who would give that notice.

17 THE COURT: I thought I did. And I thought -- but if
18 I didn't, let me correct that right now. The trusts know what
19 they have to say in their notice. And they're to provide what
20 their notices require. In addition, any such notices are to
21 say that if any recipient has concerns about what's going to
22 happen, those concerns, as I indicated, being that its
23 information's going to fall into the wrong hands or is at risk
24 of falling into the wrong hands, those objections should be
25 brought before me, and I'm going to deal with them quickly.

1 MR. KAROTKIN: Perhaps the form of notice should be
2 an exhibit to the proposed order?

3 THE COURT: Good idea. Can you make that happen?

4 MR. KAROTKIN: I'm sure Mr. Bentley can make it
5 happen.

6 THE COURT: Well, it's obviously the kind of thing
7 that you guys have to have a back-and-forth on. But make it
8 so.

9 MR. KAROTKIN: Yes, sir.

10 THE COURT: Mr. Bentley, are you on deck for
11 questions or clarifications?

12 MR. BENTLEY: A few questions, Your Honor.

13 THE COURT: Yes, go ahead.

14 MR. BENTLEY: Treasury indicated to me during a break
15 that they may wish to be included -- they may wish to be among
16 the recipients of this information. So I want -- I don't know
17 if any representative of Treasury is still in the courtroom. I
18 think not. But I wanted to mention that.

19 UNIDENTIFIED ATTORNEY: There is, there is, there is.

20 MR. BENTLEY: Oh, sorry.

21 MR. CORDARO: That's okay.

22 THE COURT: Come on up to a microphone, please.

23 MR. CORDARO: Good afternoon, Your Honor. Joseph
24 Cordaro from the U.S. Attorney's Office.

25 THE COURT: Southern District?

1 MR. CORDARO: Yes, sir. That is accurate, Your
2 Honor. The Treasury would like to be included in on this
3 information, and at the very least, have access to the
4 confidentiality order that's being proposed with it.

5 THE COURT: Well, the order is a no-brainer. And
6 subject to people's rights to be heard, I'm inclined to say
7 that you should get the same rights as the debtor. But to the
8 extent that you're wired in with New GM, I need you to give me
9 the same comfort Mr. Karotkin did that it's not going to fall
10 into the right hands -- wrong hands, that being principally
11 those who are defending lawsuits by the individual tort
12 litigants.

13 MR. CORDARO: Yes, Your Honor. I understand.

14 THE COURT: Anybody object to Treasury getting it?

15 MR. SWETT: Your Honor, I'd like to talk to counsel.
16 I don't understand their interest in the question. I would
17 have thought that the people entitled to see whatever flows
18 here by way of discovery are those who would be direct
19 participants if it comes to a contested proceeding on
20 estimation. And I was not aware that the United States
21 Treasury or New GM itself, proposed to take on such a role.

22 THE COURT: Well, Mr. Swett, Treasury is a very major
23 creditor in this case and has a number of interests in this
24 case's success as well. And I have never known the U.S.
25 Attorney's Office in this district to violate a confidentiality

1 agreement either.

2 You can talk to whoever you want. It's going to be a
3 few days or longer -- presumably a few weeks -- before there's
4 anything that's going to come into Treasury's hands. If you
5 really think you have a good objection, I'll review it ab
6 initio. But I've got to tell you, my strong tentative, unless
7 there's something that I'm unaware of, and I think I've got a
8 pretty good handle on what's going on in this case, is that
9 it's absolutely no harm no foul to let Treasury have the stuff.
10 I'm confident that I'm going to get the same protection of
11 confidential information from the U.S. Attorney's Office, and
12 that the U.S. Attorney's Office can control its client that
13 I've always had.

14 But if you really want to make an issue of this, Mr.
15 Swett, I'll give you another opportunity to be heard, and I'll
16 give Treasury an opportunity to respond.

17 MR. SWETT: Thank you.

18 MR. CORDARO: Thank you, Your Honor.

19 THE COURT: Okay. Mr. --

20 MR. BENTLEY: One final point of clarification, Your
21 Honor. And this is probably my fault in not hearing the Court
22 correctly. But Your Honor said that the order should provide
23 for subpoenas to be issued two weeks within entry of the order.
24 And --

25 THE COURT: The order or confidentiality agreement

1 and order, whichever comes later. Because I don't expect
2 people to be complying with subpoenas until there's a good,
3 solid confidentiality order in place.

4 MR. BENTLEY: So did Your Honor mean to say that the
5 subpoenas -- you're referring not to the response to the
6 subpoenas, but to the actual issuance of the subpoenas.

7 THE COURT: Yes, I want you to try to work out the
8 Swett deal first. If that doesn't work, then we'll take it to
9 the next step. But I'm intentionally allowing a two-week
10 window for you not to go down the longer road, if you can make
11 the Swett deal happen. I am not so Pollyanna-ish, if that's a
12 word, to be -- that I'm confident that you can make the deal,
13 but I want you to try.

14 MR. BENTLEY: No, understood, Your Honor.

15 THE COURT: Okay.

16 MR. BENTLEY: What I wasn't clear on is are you
17 saying that the subpoenas may not be issued less than two weeks
18 after entry of the order, or not --

19 THE COURT: Yes. What was the alternative?

20 MR. BENTLEY: -- um --

21 THE COURT: To issue them now and make them with
22 compliance required at some time later down the road?

23 MR. BENTLEY: I think I get it, Your Honor. Thank
24 you.

25 THE COURT: Yes. Okay.

1 Yes, Mr. Juris?

2 MR. JURIS: Your Honor --

3 MR. ESSERMAN: Your Honor, Sandy Esserman, may I ask
4 one question?

5 THE COURT: You may, Mr. Esserman, but I've got Mr.
6 Juris rising in front of me. I'll put you in the on-deck
7 circle.

8 MR. ESSERMAN: Thank you, sir.

9 MR. JURIS: Your Honor, this may be more
10 appropriately an issue to be taken up --

11 THE COURT: Pull the mike close to your mouth,
12 please.

13 MR. JURIS: -- among counsel. But earlier we had an
14 exchange about the number of digits to which the Social
15 Security numbers could be taken to. I take it that's something
16 that Your Honor wants us to see whether we can work out with
17 counsel?

18 THE COURT: Well, I always like you to work it out.
19 But I've got to tell my friend from the U.S. Attorney's
20 Office -- oh, no, he's U.S. Attorney's Office, he's no longer
21 GM -- New GM. That would be somebody who's not in the
22 courtroom, the Honigman firm. If it's going to save us money
23 and time to provide nine digits, I'm confident that the trusts
24 can keep things just as confidential as the creditors'
25 committee can. And I prefer to keep this thing moving and to

1 go with nine digits, rather than make life complicated for
2 everybody by only using four.

3 So I want you to share the transcript or at least an
4 anecdote of what I've said with Honigman, and tell Honigman
5 that if they have some good reason that's wholly unfathomable
6 to me why there should only be four and not nine, I'll deal
7 with it by conference call.

8 MR. JURIS: Thank you, Your Honor.

9 THE COURT: Mr. Bentley, did we cover your needs and
10 concerns?

11 MR. BENTLEY: We did, Your Honor. Thank you.

12 THE COURT: Okay, sir, behind -- in between Mr. Juris
13 and Mr. Karotkin, did you want to be heard on anything?

14 UNIDENTIFIED ATTORNEY: No, Your Honor, thank you.
15 Mr. Juris is here as counsel.

16 THE COURT: Okay. Anything, else, anybody?

17 MR. KAROTKIN: Mr. Esserman.

18 MR. ESSERMAN: Your Honor, this is Sandy --

19 THE COURT: Oh, yes, Mr. Esserman. Go ahead. I'm
20 sorry.

21 MR. ESSERMAN: I apologize. I -- Sandy Esserman on
22 behalf of the Futures group. I have one question.

23 THE COURT: Yes.

24 MR. ESSERMAN: It's a little bit out of paper, as far
25 as anything else. As regards to the confidentiality order, my

1 only question -- and I'd literally phrase it rhetorically, is:
2 Can the Treasury Department agree to a confidentiality order as
3 against a Freedom of Information request that might come into
4 the Treasury or the U.S. Attorney's Office? And would that --
5 would a confidentiality order be sufficient to protect the data
6 or the information that is being transmitted to the government?

7 THE COURT: I need help from my friend in the U.S.
8 Attorney's Office on that. You can answer it if you can today,
9 but if you can't I've got to tell you that when Mr. Esserman
10 said that, that lit up a light in my head, because I've got
11 confidence in you guys, but if you can't defend it on a Freedom
12 of Information Act request, that might be a matter of concern
13 to me.

14 MR. CORDARO: Yes, Your Honor. Joseph Cordaro,
15 again, from the U.S. Attorney's Office. And I don't think it
16 is something I can answer today and would like to consider it.

17 THE COURT: All right. Tell your guys that if I knew
18 it was only in Treasury and the U.S. Attorney's Office and it
19 could stay there, I'd be fine with it. But if there's any
20 material risk that you couldn't protect it, I'd, at the least,
21 need to hear from Mr. Esserman or anyone who shares his
22 concerns. Because I think I sense where Mr. Esserman might be
23 going on this.

24 MR. CORDARO: Thank you, Your Honor.

25 THE COURT: Mr. Esserman, further thoughts on your

1 part?

2 MR. ESSERMAN: Not right this minute. That addresses
3 it sufficiently. Thank you, Your Honor.

4 THE COURT: Well, I had assumed that you and your
5 client, the Future claims rep, would be getting the same access
6 that Mr. Swett and his guys would be getting. Has that always
7 been understood or is there a different approach on that?

8 MR. ESSERMAN: I think that to the extent that Mr.
9 Swett's clients and experts get it, it was always our intention
10 that our expert would also get it. But we're letting Mr. Swett
11 take the lead on all these issues.

12 THE COURT: Okay.

13 MR. ESSERMAN: Thank you.

14 THE COURT: All right. Fair enough. Anything else,
15 anyone? All right, thank you, folks. We're adjourned.

16 (Whereupon these proceedings were concluded at 3:57 p.m.)
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I N D E X

R U L I N G S

DESCRIPTION

PAGE

LINE

Creditors' Committee's motion granted as

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modified by the committee and as

delineated in the Court's ruling

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

LISA BAR-LEIB
AAERT Certified Electronic Transcriber (CET**D-486)

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Date: August 10, 2010